

1 UNITED STATES OF AMERICA  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 371 (RA)

5 JOHN GALANIS, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.  
9 June 11, 2018  
9:15 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13  
14 APPEARANCES

15 ROBERT KHUZAMI  
16 Acting United States Attorney for the  
17 Southern District of New York  
18 BY: BRENDAN F. QUIGLEY,  
REBECCA G. MERMELSTEIN,  
NEGAR TEKEEI,  
Assistant United States Attorneys

19 PELUSO & TOUGER  
20 Attorneys for Defendant John Galanis  
BY: DAVID TOUGER

21 BOIES, SCHILLER & FLEXNER LLP (NYC)  
22 Attorneys for Defendant Devon Archer  
23 BY: MATTHEW LANE SCHWARTZ  
LAURA HARRIS  
24 CRAIG WENNER  
25

1     Appearances (Cont'd)

2  
3     PAULA J. NOTARI

4         Attorney for Defendant Bevan Cooney

5         - and -

6     O'NEILL and HASSEN

7         Attorneys for Defendant Bevan Cooney

8     BY: ABRAHAM JABIR ABEGAZ-HASSEN

9  
10     Also present: Kendall Jackson, Paralegal  
11                   Ellie Sheinwald, Paralegal  
12                   Eric Wissman, Paralegal  
13                   Special Agent Shannon Bienick, FBI  
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1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everyone. There are a  
3 couple of things I want to talk about before we bring the jury  
4 in. First of all, what's your order of witnesses this morning?

5 MS. MERMELSTEIN: We're going to call Steve Shapiro,  
6 Raycen Raines, Patricia Walch. We have another e-mail reading  
7 module, and then if we get to it -- and I don't know that we  
8 will -- Daniel Turney.

9 THE COURT: Who is after Walch?

10 MS. MERMELSTEIN: Daniel Turney.

11 THE COURT: And reading before that. OK.

12 So, as for the testimony of Mr. Raines, I circulated  
13 an order on Saturday concerning the cross-examination of him on  
14 pay day lending. I'm sure you saw it. Correct?

15 MR. TOUGER: Yes, your Honor. I do have one point of  
16 clarification.

17 THE COURT: OK.

18 MR. TOUGER: Do you want to do that now?

19 THE COURT: Sure.

20 MR. TOUGER: Your Honor, I understand the Court's  
21 ruling, although I obviously object to it. I understand the  
22 court's ruling, and we will obviously abide by it, but my  
23 question is if the government opens the door by bringing out  
24 testimony through Mr. Raines about the detriment to the  
25 reputation of the WLCC because of what happened here, I think

1 that would open the door to me saying that the WLCC's  
2 reputation has been harmed much more so by the effect of online  
3 lending and what it has done.

4 If you Google the WLCC or Raycen Raines, the bonds  
5 don't come out until the 14th page. What comes out long before  
6 that is all the complaints, lawsuits, articles against the WLCC  
7 and Mr. Raines. So, the court has made its ruling, and  
8 obviously, as I said, I about abide by it, but if the  
9 government had opened during their opening and said they were  
10 going to prove that these bonds hurt the reputation of the WLCC  
11 and the Wakpamni, I believe that should open the door that  
12 other things hurt it a lot more than these bonds.

13 THE COURT: Do you intend to have him testify about  
14 the reputational harm?

15 MS. MERMELSTEIN: Your Honor, I'm not -- I am not  
16 asking any questions on direct examination that call for that  
17 answer, but that certainly is Mr. Raines' very strong view, and  
18 the way he answers questions it could be that that comes out.  
19 I don't think that that at all opens the door.

20 The suggestion that this harmed your reputation, I  
21 don't think that opens the door to saying, well, aren't there  
22 other things that were more harmful to your reputation? I mean  
23 so what? I don't think it opens the door to that being a  
24 proper ground of cross-examination.

25 I don't think that the order in which things appear in

1 a Google search reflects the significance of them to people who  
2 are actually doing business with each other, although I will  
3 note that the bond issue does in fact appear in the first page  
4 of the Google results if you Google the matter. But the notion  
5 that your involvement in something that some people think is  
6 unseemly is as damaging to the willingness of other financial  
7 partners to do business with you as having issued \$65 million  
8 of bonds that you're not paying back I think is wrong; it's  
9 certainly not what Mr. Raines would say; and I think it's the  
10 tail wagging the dog to say that if he says something about  
11 reputational harm, that that opens the door to other things  
12 that might have also harmed their reputation.

13 THE COURT: Let's see what he says, and then I'll rule  
14 on it. OK. Look, I think it potentially does open the door. I  
15 mean I do think it's relevant if there are other reputational  
16 harms, but I think it depends on how he phrases it. I mean if  
17 he just says like it's done harm to our reputation, fine; but  
18 if he says that harm to our reputation has prevented us from,  
19 you know, entering deals with X, Y and Z, then I think it's  
20 fair for Mr. Touger to get at other potential reasons that the  
21 WLCC has not been able to pursue, you know, deals with other  
22 entities. So that's all I meant to say in reserving ruling.

23 MS. MERMELSTEIN: I understand. Just so I understand,  
24 if Mr. Raines testifies merely that this has harmed their  
25 reputation and generally had a negative effect on their ability

1 to do business --

2 MR. TOUGER: No, that's where I --

3 THE COURT: But I think it's the ability to do  
4 business. So if he talks generally about harm to reputation,  
5 then I don't think it opens the door, but if he says that it  
6 has affected their ability to do business, then I think it is  
7 fair for Mr. Touger to ask questions about other things that  
8 have affected their ability to do business.

9 I don't want to spend too much time on it, because I  
10 think I'm concerned about that, but that's how I'm looking at  
11 this.

12 MS. MERMELSTEIN: Understood. If we just make sure we  
13 hit a break before he testifies, we will make sure to speak to  
14 him about that issue before he gets on the stand.

15 THE COURT: That's fine.

16 MS. NOTARI: Your Honor, I just want to renew my  
17 motion. We have litigated this many times before today, but I  
18 continue to believe that Mr. Shapiro is about to testify about  
19 the CNB loan is entirely prejudicial. I think now that the  
20 court has a better view of this case and you've seen the  
21 evidence, there is no direct evidence against Mr. Cooney.  
22 They're just continuing to try to convict him based on  
23 prejudicial evidence which has absolutely nothing to do with  
24 the bond. And in particular now, the prejudice, there is still  
25 prejudice against us with this Code Rebel because the jury is

1 going to hear evidence, you know, about Francisco Martin's Code  
2 Rebel shares, and they're going to hear evidence about -- they  
3 already heard Hugh Dunkerley got paid --

4 THE COURT: Well, I'm going to talk about Francisco  
5 Martin's Code Rebel shares in a minute, but go on.

6 MS. NOTARI: But in any event, now we're forced in  
7 this position that the jury is going to hear that Mr. Cooney  
8 had attained a loan for \$1.2 million based on his Code Rebel  
9 stock, and obviously the jury is going to -- some of the  
10 smarter jurors are going to put it together, and they're going  
11 to question.

12 As part of the loan there was a lot of questions about  
13 the source of payment, and we're not able to go into that now  
14 because the government is claiming that Mr. Cooney was never  
15 paid for his shares, although there is a promissory note, there  
16 is a wire transfer, there is all kinds of evidence that he did  
17 pay for his shares. But, obviously, we will open the door if  
18 we go into the fact that he paid for his shares, and so we're  
19 limited.

20 THE COURT: Why don't I address Mr. Martin on the Code  
21 Rebel share issue, and then if there is anything else you want  
22 to say, you can say it.

23 So, first of all, one other minor issue I wanted to  
24 talk about is I received a letter from Mr. Touger regarding the  
25 potential testimony of Mr. Raines, that he patronized

1 prostitutes with Derrick Galanis, another son. I assume the  
2 government wasn't going to into that.

3 MS. MERMELSTEIN: Absolutely not.

4 THE COURT: I wasn't going to let it in anyway, just  
5 to be clear on that.

6 And then yesterday, as I said, I want to address the  
7 issue of Mr. Martin's receipt of Code Rebel shares and the  
8 relevance of Mr. Archer's purchase of his own shares of Code  
9 Rebel, and I got letters on this yesterday.

10 I agree that Mr. Martin should not be cross examined  
11 on his receipt of Code Rebel shares. To the extent that any of  
12 the defendants cross-examine him on this topic, I do think they  
13 will open the door to evidence of the receipt of shares by Mr.  
14 Archer and Mr. Cooney; and given the relationship between  
15 Mr. Martin's receipt of shares that he held for the benefit of  
16 Jason Galanis and the pump and dump, cross-examination on that  
17 topic would potentially also open the door to evidence of the  
18 pump and dump more generally.

19 I also agree with the government that the defendants  
20 may not cross-examine Mr. Martin on his involvement in leaving  
21 a fake paper trail to make his receipt of Code Rebel shares  
22 appear to be a loan, because while it is probative of his  
23 character for truthfulness, this again was part and parcel of  
24 the effort to conceal the pump and dump, and accordingly would  
25 also open the door to such evidence.

1           As for the relevance of Mr. Archer's purchase of the  
2 Code Rebel shares, is it correct that that fact is already in  
3 evidence?

4           MR. SCHWARTZ: The fact that he possessed shares is  
5 for sure in evidence, because it's in the Rosemont Seneca Bohai  
6 brokerage statements; and from memory I believe that the wire  
7 transfer to Signature Bank to pay for those shares is also in  
8 evidence.

9           I think it might be helpful just stepping back to  
10 understand what it is the government intends to elicit on  
11 direct about Code Rebel from Mr. Martin, because -- I don't  
12 want to get into Code Rebel at all in any way, shape or form,  
13 but my real concern is that on direct the government is going  
14 to bring out a lot more than is necessary and is going to dirty  
15 up everything having to do with Code Rebel. And if that  
16 happens, I feel like I have to defend Mr. Archer.

17           If it's very limited and it's simply a money tracing  
18 exercise -- the sort of thing that could equally be done with a  
19 summary witness -- then that's fine, I don't have any need to  
20 touch the topic. But if they really are going to demonstrate  
21 that Mr. Martin created these sham entities, that these sham  
22 entities controlled 80 something percent of the offering, that  
23 bond proceeds were used to purchase whatever overwhelming  
24 percentage of the offering is and, therefore, illegitimized the  
25 entire transaction, then I think we have to meet that evidence.

1           If they're simply going to say bond money went in and  
2 shares were redeemed to pay the coupon on the bond, then I  
3 would just as soon stay away from this entirely.

4           MS. NOTARI: And I reiterate those points, because to  
5 the extent they go into that on direct, it's going to  
6 prejudice. Mr. Cooney and all of the evidence that's going to  
7 come in about his Code Rebel shares, the jury is going to hear  
8 that he had this stock, and that it increased in value to \$12  
9 million, and they're going to be left to wonder was this part  
10 of -- it's just a very -- I think it prejudices him the most,  
11 and I just would like to know whether or not they're going to  
12 elicit it on direct.

13           MS. MERMELSTEIN: So, with respect to what we intend  
14 to elicit from Mr. Martin, we are very cognizant of your  
15 Honor's ruling. We have made every effort to ask questions  
16 that hue to a line that gets at the relevant evidence with  
17 respect to Wakpamni and not with respect to the pump and dump.  
18 What that means is we will elicit from Mr. Martin that he was  
19 asked to create the Thunder Valley and Seymour Capital  
20 accounts, both the entities and then the brokerage accounts,  
21 for the purpose of receiving shares. He is going to say that  
22 he did that at Jason Galanis' and Gary Hirst's direction in  
23 order to hide their involvement, but that is both a part of the  
24 pump and dump scheme and the efforts to obfuscate the bond  
25 proceeds and the recycling of that, and so it's not at all

1 designed to suggest that there was anything about the sort of  
2 IPO itself that was improper. Then he is going to say that he  
3 sold the shares at their direction and that he transferred the  
4 money --

5 THE COURT: Is he saying how much the shares were  
6 worth?

7 MS. MERMELSTEIN: No. I mean, look --

8 THE COURT: I asked if he was going to say how much  
9 the shares were worth at the time that they were sold.

10 MS. MERMELSTEIN: The answer is I think both yes and  
11 no, your Honor.

12 The government is not going to elicit information  
13 about the fact that the stock price shot up. There is going to  
14 be -- there has to be in order to tie the proceed of the bonds  
15 to the purchase of these shares evidence about the dollar value  
16 of shares that were purchased. But that doesn't -- that  
17 doesn't -- and then he is just going to say like I transferred  
18 a lot of money. He will talk about a couple different  
19 transfers, but it's not clear how much total was transferred so  
20 there is no -- the jury can't line up that the value went way  
21 up. There is no way for them to know that, and we're not  
22 intending to get into that.

23 THE COURT: OK.

24 MS. MERMELSTEIN: And so that is our intention.

25 With respect to Mr. Archer's shares -- I don't know if

1 in light of that Mr. Schwartz still wants to offer that.

2 MR. SCHWARTZ: Can I ask you one more question,  
3 because I think you're on the right track. Does the government  
4 --

5 THE COURT: Can you bring the mic closer, please.

6 MR. SCHWARTZ: Does the government intend to get into  
7 the percentage of the float?

8 MS. MERMELSTEIN: No. Because that's related to the  
9 pump and dump scheme.

10 MR. SCHWARTZ: To me that's the critical issue. And  
11 you can use Apple shares, IBM shares, any kind of stock to  
12 launder the proceeds of a fraud scheme. If that's all that  
13 they're proving -- obviously we will have to see how the  
14 testimony comes in -- but I think I can stay away from it  
15 entirely.

16 MS. MERMELSTEIN: That's fine. I will note with  
17 respect to Mr. Archer owned shares of what is actually in  
18 evidence, Mr. Schwartz is right that there is evidence in the  
19 RSB bank statements of the ownership of Code Rebel shares.  
20 Those are not the shares that Mr. Archer paid for; those are  
21 the shares that we fought about. So, I don't think that -- I  
22 think letting in the fact that he owned them, it's going to be  
23 confusing and factually incorrect to suggest that he paid for  
24 those shares. He didn't. The shares he paid for actually went  
25 to Burnham. We are not going to get into the fact that Burnham

1 held those Code Rebel shares, so again I think that that door  
2 should stay closed.

3 THE COURT: All right. And if you need to lead  
4 Mr. Martin, I will let you do so.

5 MS. MERMELSTEIN: Thank you.

6 One other issue with respect to Code Rebel, your  
7 Honor, is that the Cooney recording issue triggers the Code  
8 Rebel issue, in the government's view, because, as is put forth  
9 in the parties' papers, the defense is seeking to offer a  
10 limited portion of that recording, which gives a misimpression  
11 that Cooney is involved in legitimate businesses and is talking  
12 about legitimate businesses, and it's being offered to suggest  
13 I think two things: One, falsely, that Mr. Cooney is a  
14 legitimate business person; and, two, to get at the way he  
15 talks about Mr. Archer, including the references to Mr.  
16 Archer's political connections.

17 THE COURT: I'm sorry, are you talking about 4908 and  
18 4904, the Cooney-Crafton recordings?

19 MS. MERMELSTEIN: Yes.

20 So, as the government put forth in its letter, if the  
21 defendants offer that, the government thinks that that entitles  
22 the government to offer other portions of that recording in  
23 which Mr. Cooney talks about his participation in, among other  
24 things, Arben Kane companies -- Arben Kane is the CEO of Code  
25 Rebel -- and his efforts to participate in pump and dumps. He

1 talks about, for example, efforts to control all the shares of  
2 a stock, to park them places with investors who aren't going to  
3 sell them. And if the Code Rebel door is being opened wide by  
4 virtue of that, I think we need to know that before Francisco  
5 Martin testifies, since he's the witness who will explain the  
6 pump and dump, and so I think we need to know the answer on the  
7 Cooney recording.

8 THE COURT: Well, wouldn't the recording come in on  
9 the defense case anyway if they chose to do that?

10 MS. MERMELSTEIN: No, I don't think so. I think if  
11 your Honor allowed that in, we would put in the whole thing,  
12 both the portions that they're talking about and the portions  
13 that relate to the pump and dump scheme, in one segment in the  
14 government's case.

15 THE COURT: I see. I had not appreciated that. I  
16 thought that that was an issue for the defense case.

17 MS. MERMELSTEIN: I don't think it is. I also think  
18 that as a practical matter, even if that were true, if they're  
19 going to only the door, we should be allowed to ask Francisco  
20 Martin those questions now rather than have him testify and get  
21 back on a plane to Italy and bring him back in a rebuttal case.

22 THE COURT: Do you want to be heard on that?

23 MR. SCHWARTZ: Sure. I mean just two quick points.  
24 First of all, procedurally this is putting the cart before the  
25 horse a little bit, but I don't agree with Ms. Mermelstein's

1 proposal. This has always been marked as a defense exhibit.  
2 The government originally marked it and told us they were  
3 withdrawing it as an exhibit, which is when we told them that  
4 we want to put it in. And now they seek to coopt it and make  
5 it part of the government case.

6 Just as I was not allowed to put in additional e-mails  
7 or cross-examine their document reader, they shouldn't be  
8 allowed to put a defense exhibit in on the government case just  
9 because --

10 THE COURT: But they can change their mind and put the  
11 whole exhibit in as a government exhibit if they want to.

12 MR. SCHWARTZ: Oh, I mean I don't think that's right,  
13 your Honor. I think they're taking advantage of the fact that  
14 we made early disclosure of our exhibits by agreement. And,  
15 you know, throughout this trial the agreement has always been  
16 when we have done that they were receiving information on the  
17 condition that they not preempt us through the use of the  
18 exhibit, so I don't think that's very fair.

19 With respect to the subject matter of the tape, look,  
20 the government has always been clear that in their view if it  
21 is admitted they want to offer other parts of the tape for  
22 completeness, which is fine by me. I don't know what parts  
23 they are; obviously we may disagree with the specific parts;  
24 but the concept is fine. But there is no reference anywhere on  
25 that tape to my memory to Code Rebel, so I don't understand how

1 this would open the door to Code Rebel.

2 THE COURT: I'm sorry, just to be clear, did you say  
3 Martin is testifying today or tomorrow?

4 MS. MERMELSTEIN: I expect he will testify tomorrow,  
5 your Honor, but obviously to the extent that there is going to  
6 be a significant change in the scope of his testimony, we need  
7 to know I think by the end of today.

8 THE COURT: I understand.

9 MS. MERMELSTEIN: But just to be clear, let me say two  
10 things. One is there is no agreement between the parties that  
11 the government won't offer anything in its case in chief. With  
12 respect to any agreement, the agreement was that the government  
13 would give significant advanced notice of which exhibits it  
14 intended to use with which government witness, and in return  
15 the defense would identify the night before which exhibits they  
16 intended to use on cross-examination, so that we could more  
17 easily handle any objections to those.

18 We're not talking about that. No one has talked about  
19 which witness the Cooney recording will come in through. That  
20 was just marked as a defense exhibit sort of at the time the  
21 defense exhibits were marked. And the word Code Rebel is not  
22 on the recording, to be clear, but there is explicit  
23 conversation about Cooney's involvement in more than one pump  
24 and dump scheme involving Arben Kane companies, one of which is  
25 Code Rebel. The government intends to offer that. If the

1 defense wants to offer the other portion of the Cooney  
2 recording, that obviously opens the flood gates to the Code  
3 Rebel story, and I think we should not wait and put in that  
4 whole case in a rebuttal case; we should handle it now.

5 MR. SCHWARTZ: I guess my suggestion would be --  
6 because my memory is that it is not nearly as clear as the  
7 government is saying that that is what is being discussed, so  
8 my suggestion is the government should tell us exactly which  
9 portions of the tape it intends to counterdesignate, and then  
10 we can all look at it and have a discussion.

11 THE COURT: Let's do that, but I just found out the  
12 jury is all here, so can we do that during the break?

13 MS. MERMELSTEIN: We can, your Honor, but I think  
14 there is one more Steve Shapiro issue we need to take up.

15 THE COURT: All right.

16 MS. MERMELSTEIN: Which is that Ms. Notari has  
17 provided a list of exhibits, including a few that were marked  
18 for the first time this morning, that she intends to use to  
19 cross-examine Mr. Shapiro. The government has objections to a  
20 few of them. Ms. Notari also has objected to a number of  
21 exhibits that the government intends to offer with Mr. Shapiro.  
22 He is the first witness.

23 So, I can start with I guess Ms. Notari's exhibits  
24 with respect to cross-examination. We have no objection to a  
25 number of them, so I won't go through those. There are five

1 that we object to.

2 Defense Exhibit 3172 -- can I ask you to pull that up,  
3 Mr. Wissman -- is an e-mail between Matthew Fillman -- an  
4 employee of Fulton & Meyer -- and Mr. Cooney, in which  
5 Mr. Fillman tells Mr. Cooney to fill out his personal financial  
6 statement with big round numbers, not too detailed.  
7 Mr. Shapiro is not on this e-mail.

8 THE COURT: All right. How are you going to use this?

9 MS. NOTARI: Your Honor, this e-mail was sent to my  
10 client from his business manager who was attempting to get him  
11 a loan, and in connection with the financial statement that  
12 Mr. Cooney filled out -- the only financial statement that  
13 Mr. Cooney filled out in relation to this loan -- Matthew  
14 Fillman tells him.

15 THE COURT: But how can you ask Mr. Shapiro that?

16 MS. NOTARI: Because I think it goes towards my  
17 client's state of mind; it goes towards his effect on the  
18 listener that he was told when he filled out this application,  
19 you know, to use big round numbers, not too detailed.

20 THE COURT: But this is not something that Steve  
21 Shapiro knows about, right?

22 MS. NOTARI: Well, I want to ask him if he knows about  
23 it, but I also think that it should be admitted as an exhibit.  
24 I think the jury should know that that was --

25 THE COURT: But what is the basis for asking this

1 witness about this exhibit?

2 MS. NOTARI: I want to ask him if he knows that this  
3 is what he was told, and if he was -- you know, if he -- you  
4 know, I want to ask him if he knows what he was told. But also  
5 I think that the exhibit is admissible for the jury to consider  
6 along with the financial statement that that's what my client  
7 was told.

8 THE COURT: It doesn't sound like there is a basis to  
9 ask this witness about this exhibit.

10 MS. NOTARI: Well, would your Honor consider admitting  
11 the exhibit as state of mind?

12 THE COURT: On what basis?

13 MS. NOTARI: On the ground that it's relevant  
14 towards --

15 THE COURT: But who is going to authenticate it?  
16 What's the foundation for it?

17 MS. NOTARI: The e-mail is from my client. It's  
18 already authenticated. It's from my client's e-mail.

19 THE COURT: I don't think you've provided a proper  
20 basis for the admission of the exhibit. I don't think you've  
21 called -- I mean you can call a witness who can testify that he  
22 knows what this exhibit is, and then you can provide a basis  
23 for it, but I don't think you've done that, so it doesn't seem  
24 like it should come in, so that's 3172.

25 MS. MERMELSTEIN: Yes, your Honor. The next one is

1 four exhibits; they are actually I think in many ways related.  
2 Government Exhibit 426 is an e-mail from Mr. Cooney to  
3 Mr. Shapiro providing a full opinion with respect to the Code  
4 Rebel bond.

5 MS. NOTARI: Your Honor, I'm not going to admit that.  
6 I told them that what I want to do -- again, this touches on  
7 the Code Rebel issue. I'm not going to admit this exhibit.

8 What I want to just be able to do is ask the witness,  
9 you know, that certain questions were being asked of Mr. Cooney  
10 to provide -- they were trying to get the restriction lifted  
11 off the Code Rebel stock, and one of the things they talked  
12 about was seeking a lawyer to assist, and in fact a lawyer did  
13 provide -- so this would just be used to refresh his  
14 recollection, but it wouldn't be admitted into evidence, and I  
15 wouldn't go into the substance of the e-mail which talks about  
16 again payments; it talks about wire evidence.

17 THE COURT: So you're not going to use it.

18 MS. NOTARI: No, I'm not.

19 THE COURT: But what are you going to ask him?

20 MS. NOTARI: I just may refresh his recollection.

21 THE COURT: Well, you don't know that he doesn't  
22 remember something.

23 MS. NOTARI: I understand, but if he doesn't --

24 THE COURT: What are you going to ask him?

25 MS. NOTARI: I'm just going to say and there came a

1 time when you tried to get -- you and Mr. Cooney spoke about  
2 getting legal assistance, and in fact you contacted a lawyer --  
3 he contacted a lawyer and he provided you with a legal opinion.

4 THE COURT: And you're he not going to say what that  
5 legal opinion was?

6 MS. NOTARI: Well, the legal opinion was toward  
7 helping to get the restriction lifted off the Code Rebel stock.

8 THE COURT: But are you going to try and elicit the  
9 legal opinion?

10 MS. NOTARI: No.

11 THE COURT: OK.

12 MS. NOTARI: And again I just want clarification that  
13 there are certain things around Code Rebel that I'm not going  
14 to get into, but, look, one of the things that I want to ask  
15 this witness is that he understands in his 3500 material he  
16 says that Mr. Cooney -- his understanding was he was helping  
17 take Code Rebel public; that was why he was getting the shares.  
18 I'm not going to go beyond that.

19 But I think it's relevant, you know, why if he knew --  
20 because he was giving him a \$1.2 million loan. So I mean of  
21 course he was doing his due diligence in trying to determine,  
22 you know, why Mr. Cooney had the stock. So, to the extent that  
23 Mr. Cooney was an investor and he was helping promote the stock  
24 and take it public, I think if I stop there, I think that's not  
25 opening the door.

1 MS. MERMELSTEIN: Your Honor, the problem is Ms.  
2 Notari's rendition wildly mischaracterizes what happened and is  
3 an effort to suggest to the jury that there was a stamp of  
4 legitimacy on this by a lawyer, when in fact the series of  
5 e-mails that relate to this -- which I understand she is not  
6 trying to put in but she's trying to get at -- are the very  
7 evidence that Code Rebel was a fraud and that Mr. Cooney was  
8 lying about his receipt of the shares.

9 We're not putting that in for obvious reasons, but she  
10 can't put in the piece that makes it sound OK and then say the  
11 government can't put in the evidence that it was a fraud.

12 And here is the issue: Mr. Cooney -- when the loan  
13 went bad, City National Bank wanted to take possession of the  
14 Code Rebel shares. They were in a City National account in  
15 Mr. Cooney's name. They wanted to hold themselves and be able  
16 to sell them themselves to pay off a loan. In an effort to do  
17 that, there was compliance-related disclosures about how  
18 Mr. Cooney had come to own the bond that Mr. Cooney had to make  
19 to the bank and which he did make to the bank. Having  
20 previously said to the bank that he had acquired the shares,  
21 that he was paid as compensation for his work on the IPO in  
22 shares, and that was how he came to own so many Code Rebel  
23 shares, when the bank then said to him many months later, well,  
24 we need the documentation that proves that, there was no  
25 documentation that proved that because it wasn't true.

1 Instead, Mr. Cooney for the first time submitted various  
2 purported loan agreements between himself and Thorsdale which  
3 purported to represent that Thorsdale had loaned Cooney  
4 \$100,000, that Cooney had used that money to buy the Code Rebel  
5 shares and had then paid back the loan. And in connection with  
6 those fake agreements there was a legal opinion saying sort of  
7 I've reviewed these agreements and these are what they say  
8 basically. Right? Those documents are fake; there was no such  
9 loan from Thorsdale.

10 MS. NOTARI: And there is testimony from Mr. Dunkerley  
11 that he created fake documents and didn't tell people that they  
12 were fake.

13 THE COURT: Go ahead.

14 MS. MERMELSTEIN: They were fake. Mr. Cooney of  
15 course knew that there had been no such agreement. It's  
16 exactly the same story with Mr. Martin -- although we're not  
17 going to elicit that from him -- he too got shares, the same  
18 exact agreements used to paper over that after the fact.

19 You can't put in the fact of the legal opinion without  
20 opening the door to the fact that that legal opinion was based  
21 on false documents intentionally submitted by Mr. Cooney.

22 THE COURT: I agree with that. All right. Are there  
23 other issues? Can we bring the jury in?

24 MS. MERMELSTEIN: Sorry, your Honor.

25 MS. NOTARI: I'm not sure. So I cannot ask --

1 THE COURT: I think if you ask about a legal opinion  
2 and suggest propriety in that fashion, then you're opening the  
3 door, and the government can bring the rest of it in.

4 MS. NOTARI: OK.

5 MS. MERMELSTEIN: The last three, your Honor, there  
6 are e-mails from Mr. Cooney -- so City National Bank says we  
7 want to take possession of them ourselves so we can be in  
8 control of selling them. Mr. Cooney initially says yes. He  
9 then says, no, I'm not going to let you have possession of  
10 them. Mr. Cooney then says, no, I'm not going to let you have  
11 possession of them; I want to be the one who is going to sell  
12 them; and he transfers them out of the City National securities  
13 account out of City National Bank.

14 The e-mails -- the last three e-mails that were  
15 produced to the government this morning by Ms. Notari -- 3717,  
16 3718 and 3738 -- all pertain to that.

17 I first of all don't think it's relevant sort of what  
18 happened at the end of the day there, but more than that, they  
19 include statements from Mr. Cooney to the effect of like I have  
20 to look out for my family; I'm just trying to do the right  
21 thing; I'm going to ultimately be able to sell these and make  
22 you whole; and all of that is inappropriate hearsay, without  
23 any relevance.

24 MS. NOTARI: We're not putting those in.

25 MS. MERMELSTEIN: OK. And then the government's view

1 on 408, 410, 418 and 419 is that they're all admissible for  
2 nonhearsay purpose us. I would note among other things that I  
3 expect Mr. Shapiro will lay a foundation that Mr. Fillman  
4 operated as Mr. Cooney's agent for purposes of obtaining the  
5 loan, and statements by Mr. Fillman are thus statements by  
6 Mr. Cooney for purposes of coconspirator statements and  
7 statements of the defendant, etc., so I think they're  
8 admissible. I don't know if your Honor wants to take those up  
9 now or as they come in.

10 THE COURT: Do you want to be heard?

11 MS. NOTARI: It's up to you, your Honor, because I'm  
12 objecting to 408, 418 and 419, because they are clearly  
13 hearsay; they're e-mails between Matthew Fillman and Steve  
14 Shapiro. And I've never heard this theory about Steve Shapiro  
15 acting as a coconspirator agent.

16 THE COURT: Why don't we see how the foundation is  
17 laid for that.

18 MS. MERMELSTEIN: That's fine, your Honor. I will  
19 then just offer the rest of the exhibits without objection at  
20 the beginning of the Q and A, and I will lay a foundation for  
21 those as we go.

22 THE COURT: OK. And I'm going to look at those now.

23 MS. NOTARI: Your Honor, if I can just have a moment  
24 to just factor in what just happened.

25 THE COURT: OK. But I do want to bring the jury in.

1 MR. SCHWARTZ: I just want to be clear on the  
2 record -- because obviously Code Rebel runs through a good deal  
3 of Mr. Shapiro's testimony -- that whatever happens there  
4 should not open the door to anything involving Code Rebel and  
5 Mr. Archer. Are we all agreed on that?

6 MS. MERMELSTEIN: I mean I don't think --

7 MR. SCHWARTZ: Otherwise I'm going to have to object  
8 very aggressively, and I really want to be able to sit back.

9 THE COURT: I mean the government is going to -- I'm  
10 sure it will abide by my ruling, and so let's see what happens.  
11 I mean I can't tell you if Ms. Notari will open the door.

12 MR. SCHWARTZ: That's my point. Even if she does, it  
13 should be only with respect to her client. This witness has  
14 nothing to do with Mr. Archer.

15 THE COURT: I assume that will be the case. That's  
16 what I expect. So, let's just bring the jury in.

17 MR. SCHWARTZ: Thank you.

18 THE COURT: It was 408, 410, 418 and 419?

19 MS. MERMELSTEIN: I think it's now 408, 418 and 419.  
20 I think Ms. Notari said he's not objecting to 410.

21 THE COURT: OK.

22 MS. NOTARI: Can I have that list again? I'm sorry.

23 THE COURT: 408, 418 and 419.

24 (Continued on next page)

I6B7GAN1

Shapiro - Direct

1 (Jury present)

2 THE COURT: Good morning, everyone. I hope you all  
3 had a nice weekend. Please be seated.

4 MS. MERMELSTEIN: The government calls Steven Shapiro.

5 STEVEN SHAPIRO,

6 called as a witness by the government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MERMELSTEIN:

10 Q. Good morning, Mr. Shapiro.

11 A. Good morning.

12 Q. Let me ask you to keep your voice up. The acoustics are  
13 terrible. Where do you work?

14 A. City National Bank.

15 Q. And how long have you worked at City National Bank?

16 A. Approximately 19 years.

17 Q. What is your current title?

18 A. Senior vice president, team leader and sales manager.

19 Q. And what are your general duties and responsibilities as a  
20 senior vice president, team leader and sales manager?

21 A. As a team leader I supervise 11 employees that take care of  
22 all aspects of our clients' affairs, banking affairs, including  
23 loans and deposits, investments, etc., and I cover about 6,000  
24 clients.

25 As a sales manager I take care of all of the sales and

I6B7GAN1

Shapiro - Direct

1 marketing activities for the entertainment division of City  
2 National Bank for our offices in Beverly Hills, New York,  
3 Nashville and Atlanta.

4 Q. Are you familiar with someone named Bevan Cooney?

5 A. I am.

6 Q. Have you ever met him in person?

7 A. I have.

8 Q. Do you think you would recognize him if you saw him again?

9 A. Yes.

10 Q. Let me ask you to look around the courtroom and see if you  
11 see him. And if you do, can you point him out and indicate an  
12 item of clothing he is wearing?

13 A. Mr. Cooney is sitting at the defense table. I believe -- I  
14 can't quite see him, but I think it's a pink tie.

15 MS. MERMELSTEIN: Can I ask that the record reflect  
16 that the witness has identified Mr. Cooney.

17 THE COURT: It will so reflect.

18 Q. Now, how do you know Mr. Cooney?

19 A. Mr. Cooney was a client of City National Bank.

20 Q. Are you familiar with something called Fulton Management?

21 A. I am.

22 Q. What is Fulton Management?

23 A. It's a business management firm.

24 Q. Did it go by any other names?

25 A. It was known as Fulton & Meyer as well.

I6B7GAN1

Shapiro - Direct

1 Q. What if any relationship did Fulton Management or does  
2 Fulton Management have with City National Bank?

3 A. Fulton Management is a client of City National Bank, as are  
4 between any of 300 to 500 of their clients also are clients of  
5 ours.

6 MS. NOTARI: Your Honor, I missed that answer.

7 THE COURT: Repeat your answer, please.

8 A. Certainly. Fulton Management is a business management  
9 firm. Their relationship with City National Bank is that  
10 Fulton Management is a client of our bank as are approximately  
11 300 to 500 of their clients.

12 Q. I want to turn your attention now to early 2015. Were you  
13 involved in making a loan to Mr. Cooney at that time?

14 A. I was.

15 Q. Was that the first time that City National Bank had made a  
16 loan to Mr. Cooney?

17 A. No, it was not.

18 Q. Who generally was your point of contact with respect to the  
19 loan that Mr. Cooney sought?

20 A. Fulton Management was, and their representatives Matthew  
21 Fillman, Eric Fulton and others.

22 Q. And did Mr. Fillman act as Cooney's authorized agent in the  
23 communications seeking the loan?

24 A. Yes, he did.

25 Q. What size loan was Mr. Cooney seeking in early 2015?

I6B7GAN1

Shapiro - Direct

1 A. Approximately \$100,000.

2 MS. MERMELSTEIN: The government will now offer, your  
3 Honor, without objection, Government's Exhibits 405, 409, 410,  
4 411, 412, 414, 423 and 424.

5 THE COURT: They will be admitted.

6 (Government Exhibits 405, 409, 410, 411 received in  
7 evidence)

8 (Government Exhibits 412, 414, 423 and 424 received in  
9 evidence)

10 Q. I want to turn your attention to what is now in evidence as  
11 Government Exhibit 405.

12 Can we please pull that up, Mr. Wissman.

13 Looking at the top e-mail, that's an e-mail from  
14 Matthew Fillman to you on February 4, 2015?

15 A. That is correct.

16 Q. And if we can go to the attachment, what is attached to  
17 that e-mail?

18 A. This is a personal financial statement on a City National  
19 Bank form where Mr. Cooney is listing his assets and his  
20 liabilities.

21 Q. Why was this sent to you?

22 A. In conjunction with the loan request for approximately  
23 \$100,000 this would have been one of the required forms that we  
24 would have had him complete.

25 Q. I should note for you that there is a hard copy of the

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Shapiro - Direct

1 documents in fronts of you. In particular this one seems a  
2 little hard to read on the screen.

3 So let's look at the second page of this personal  
4 financial statement. And on the left hand side of the page, do  
5 you see the section titled assets?

6 A. Yes.

7 Q. What is listed as Mr. Cooney's listed stocks and bonds?

8 A. He lists \$5 million worth of bonds and \$2 million worth of  
9 stock.

10 Q. And does it indicate approximately how much cash he has on  
11 hands?

12 A. \$49,000.

13 Q. And if we can zoom back out, please, and if you look on the  
14 right-hand side what does that indicate about Mr. Cooney's  
15 liabilities?

16 A. His liabilities listed are \$93,000 with City National Bank,  
17 other revolving debt of \$150,000, and other installment debt of  
18 \$100,000, real estate loans of \$95,000. Total liabilities are  
19 \$438,000.

20 Q. Why does City National Bank request that information in  
21 considering a loan?

22 A. In order to determine whether somebody has the ability to  
23 repay we look for two primary sources: One is that their  
24 income is sufficient to repay; and should their income not be  
25 sufficient to repay, we look for a secondary source of

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Shapiro - Direct

1 repayment in the form of assets that they would own that could  
2 easily be liquidated in the case of a loan default.

3 MS. MERMELSTEIN: Can we pull up Government Exhibit  
4 408, please, for the witness, court and the attorneys.

5 Q. Now, did there come a time that you received additional  
6 information about the \$5 million of bonds listed on  
7 Mr. Cooney's personal financial statement?

8 A. Yes.

9 MS. MERMELSTEIN: Your Honor, I think there is now a  
10 foundation for the admission of Government Exhibit 408.

11 MS. NOTARI: Your Honor, we object.

12 THE COURT: I will allow it.

13 MS. MERMELSTEIN: The government offers Government  
14 Exhibit 408, and let's that to publish that to the jury now,  
15 please.

16 THE COURT: It will be admitted.

17 (Government Exhibit 408 received in evidence)

18 Q. So, let me direct your attention, in the middle of the page  
19 you e-mail Mr. Fillman in response to having received a  
20 personal financial statement and say: \$100,000 personal line,  
21 correct? How does will Mr. Fillman respond?

22 A. His response is at the top where he has written "He bought  
23 the attached \$5 million in bonds ... these were the ones that  
24 CNS" -- which stands for City National Securities -- "could not  
25 custody. NPC/Pershing is ... we are in process of having the

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Shapiro - Direct

1 issuer merge this series with the previous series ... so they  
2 will be more marketable. You will see the outstanding wire for  
3 \$5 million to buy them. They split the issue to accommodate  
4 his order but doing so meant that he bought the entire quantity  
5 of the second series, so it has no market price since there are  
6 no bonds trading, as he owns them all."

7 Q. What did he mean that these were the ones that CNS could  
8 not custody?

9 THE COURT: What did you understand him to mean?

10 A. Certainly. At some point in time near this particular date  
11 the goal was for the bond itself to be held in custody by City  
12 National Securities, which is the broker arm of City National  
13 Bank. By holding it there it makes it more readily -- readily  
14 easy to buy, sell, trade when it's being held in custody by a  
15 securities firm.

16 (Continued on next page)  
17  
18  
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20  
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22  
23  
24  
25

I6B5gal2

Shapiro - direct

1 BY MS. MERMELSTEIN:

2 Q. If it wasn't held at City National Securities, where was  
3 this bond held?

4 A. According to Mr. Fillman, it was held at NPC Pershing, a  
5 different brokerage house.

6 Q. Let's go to Government Exhibit 409, please? Directing your  
7 attention to the bottom of the page, an e-mail from Richard  
8 Isaacs to Bevan Cooney. Let me ask you to read just the first  
9 line of that e-mail.

10 A. Bevan, great news. Attached please find the account  
11 balance showing the bonds as held with Pershing.

12 Q. If we can go up one e-mail in the chain where Mr. Cooney  
13 forwards the e-mail to Matthew Fillman, what did Mr. Cooney  
14 write to Mr. Fillman?

15 A. Matthew, Pershing now reflecting my bonds with the value of  
16 \$5.5 million. This should be helpful for loan.

17 Q. Do you see at the top Mr. Fillman forwarded that e-mail to  
18 you?

19 A. Yes, he did.

20 Q. With respect to efforts to obtain a loan, was it helpful  
21 from City National's perspective that there was now a value  
22 reflected for these bonds?

23 A. Yes. Absolutely.

24 Q. Did City National Bank ever issue the \$100,00 loan that was  
25 requested?

I6B5gal2

Shapiro - direct

1 A. Yes, we did.

2 Q. Did there come a time that Mr. Cooney requested a larger  
3 loan from City National Bank?

4 A. Yes, there was.

5 Q. Approximately when was that?

6 A. Approximately May of 2015.

7 Q. Let me direct your attention now to Government Exhibit 411  
8 and if we can go to the second page and let me ask you to read  
9 Mr. Fillman's e-mail to you on May 20th of 2015.

10 A. Is this the Steven Shapiro that works for  
11 crappy-loans-are-us? Please call me back.

12 Q. What did you understand him to mean by that reference?

13 A. Matthew Fillman and I have worked together for many, many  
14 years and he understands what City National Bank's typical loan  
15 underwriting requirements are. He knew that this particular  
16 request fell outside of our normal parameters.

17 Q. Let me ask you to actually go back for just one moment to  
18 Government Exhibit 409, and if you can look at the last page of  
19 that exhibit, please? Let me ask you then, Mr. Shapiro, what  
20 is the \$5 million bond Mr. Cooney holds, according to this  
21 attachment that you own?

22 A. I am not seeing it in my book under 409. Oh, I'm sorry.  
23 Yes, I am.

24 Q. Very last page of 409.

25 A. This is a brokerage statement showing the Wakpamni Lake

I6B5gal2

Shapiro - direct

1 Community Corporate municipal bonds with a position value of  
2 \$5,523,600.

3 Q. That's Wakpamni. W-A-K-P-A-M-N-I?

4 A. Correct.

5 Q. Let's go back to 411, please, and I think I interrupted you  
6 when you were explaining Mr. Fillman's reference to the crappy  
7 loans are us.

8 A. Yes.

9 Q. What did you understand that to mean?

10 A. Mr. Fillman was asking for a \$1.2 million loan. He knew  
11 that that would have been a stretch under our normal  
12 underwriting parameters, therefore he is setting the stage for  
13 me to keep an open mind to this particular request.

14 Q. Let's go to the first page of this e-mail, please, and if  
15 we can look at the e-mail that is second from the bottom from  
16 Mr. Fillman to you, what does Mr. Fillman tell you?

17 A. He is telling us that he is requesting a stock-secured  
18 single stock, Nasdaq-traded, at least it is not a penny stock,  
19 IPO was yesterday.

20 Q. Let me stop you right there and let's go to the top portion  
21 of the e-mail or the top two, I guess.

22 How do you respond to him?

23 A. The first one, which is the second e-mail, my response was  
24 that I wanted to see if our credit administrators would allow  
25 taking that stock as collateral. Normally the minimum price

I6B5gal2

Shapiro - direct

1 per share is \$10 and it has to be seasoned, but at this kind of  
2 loan to value -- LTV -- we will see.

3 Q. Then Mr. Fillman responds to you. What does he say?

4 A. He says \$190,000 of the proceeds would pay off your  
5 existing credit, which is the loans that City National already  
6 had outstanding to Mr. Cooney, \$90,000 on the term loan and  
7 \$100,000 personal money line -- PML. We could possibly put a  
8 limited share stop loss order in place just in case. Run it  
9 the blue ladder.

10 Q. What is the reference to the blue ladder?

11 A. The blue ladder is the symbol of City National Bank and  
12 therefore he is making another reference to run it up our chain  
13 of command.

14 Q. What did you understand Mr. Fillman to mean -- excuse me  
15 \$190,000 of the proceeds would pay off existing credit, \$90,000  
16 on term loan and \$100,000 PML?

17 A. At that point in time in May he had two outstanding loans  
18 with City National Bank, a \$90,000 term loan and \$100,00  
19 personal money line which is the one we had granted earlier in  
20 the year.

21 So, \$190,000 of the loan proceeds would be used to  
22 pay -- of the new loan proceeds would be used to pay those two  
23 off.

24 Q. Did there come a time that you were asked to do a medallion  
25 guarantee for Mr. Cooney?

I6B5gal2

Shapiro - direct

1 A. Yes, there was.

2 Q. What is the medallion guarantee?

3 A. Medallion guarantee is a signature guarantee on a  
4 marketable security, a stock or a bond. So, similar to what a  
5 notary would do on real estate documents or other kinds of  
6 documents where you are guaranteeing somebody's signature, you  
7 use a medallion guarantee to guarantee somebody's signature on  
8 a stock or bond-related matter.

9 Q. Can that be done with -- does it have to be done in person  
10 or can someone send their signature to you to be medallioned?

11 A. In almost all cases they are done in person, but with our  
12 relationship with various business management firms,  
13 Fulton & Meyer being one of them, if the client had signed in  
14 front of them and they sent it to me, I would take their word  
15 for it but it's not -- it doesn't happen often. Most of the  
16 time people are in person presenting identification to me.

17 Q. I want to direct your attention now to Government Exhibit  
18 410, and if you look at the third to last page, and if I can  
19 direct your attention to the April 24th, 2015 e-mail from  
20 Alexis Gluckman to you, who was Alexis Gluckman?

21 A. He was an employee at Fulton & Meyer, Fulton Management.

22 Q. What is Alexis Gluckman asking you here?

23 A. She is asking to send me a form that Mr. Cooney will sign  
24 in front of me and I will place my medallion guarantee stamp on  
25 the form to verify that it is his signature.

I6B5gal2

Shapiro - direct

1 Q. Let's look at what is attached to this form; what is that?

2 A. This is an irrevocable stock or bond power in which  
3 Mr. Cooney would be either selling, assigning or transferring  
4 to Burnham Financial \$5 million worth of bond with a particular  
5 QSIP number listed there.

6 Q. Did you in fact medallion this form?

7 A. To the best of my recollection, I did.

8 Q. Then if we go to Government Exhibit 412, please? And if  
9 you look at, if you go again to the second page, please? What  
10 is Ms. Gluckman asking you on May 27?

11 A. She stated when we did the original bond power for Bevan  
12 they gave us the wrong name for the transfer. Can Bevan come  
13 down and get a new medallion stamp on the new form?

14 Q. Can we look at the attachment, please?

15 What is this document?

16 A. Once again, irrevocable stock or bond power in which  
17 Mr. Cooney would be selling, assigning, or transferring to  
18 Bonwick Capital Partners Limited a \$5 million bond with a  
19 particular QSIP number.

20 Q. Did you in fact medallion this form?

21 A. I did.

22 Q. Did you meet Mr. Cooney in person in order to do so?

23 A. I did.

24 Q. Now, at the time of this e-mail from Ms. Gluckman, what was  
25 status of Mr. Cooney's request for the \$1.2 million loan?

I6B5gal2

Shapiro - direct

1 A. The \$1.2 million loan had not yet been documented. It was  
2 something that we were prepared to issue our commitment, and we  
3 were probably a week away from being able to fund the loan.

4 Q. While meeting with Mr. Cooney in person to medallion this  
5 form, did you have any discussion with him about the loan?

6 A. I did.

7 Q. What did you say?

8 A. I said, we are looking at doing a \$1.2 million loan for  
9 you. He agreed. I said, we are using the Code Rebel stock as  
10 the primary source of repayment. When the restriction gets  
11 lifted off of this particular stock you are going to pay back  
12 our loan; is that correct? He answered in the affirmative. I  
13 said, and if something goes wrong with that particular stock,  
14 you are going to liquidate the \$5 million muni bond that you  
15 hold? Is that correct as well? And he acknowledged in the  
16 affirmative as well.

17 Q. Looking at the actual document that you medallioned, did  
18 you understand in medallioning this document that Mr. Cooney  
19 was transferring or selling or otherwise moving his Wakpamni  
20 bonds to Bonwick?

21 A. No. I had no knowledge whether, what bond these were. I  
22 did not look up the QSIP number.

23 Q. Did you have any idea whether he -- withdrawn.

24 Does City National Bank agree to issue the  
25 \$1.2 million loan?

I6B5gal2

Shapiro - direct

1 A. We did.

2 Q. And that was based on both the Code Rebel shares and the  
3 Wakpamni bonds?

4 A. That is correct.

5 Q. Did Mr. Cooney sign any documentation in connection with  
6 \$1.2 million loan?

7 A. Yes, he did.

8 Q. Let me direct your attention to Government Exhibit 414.  
9 What is that?

10 A. This is a promissory note for a \$1.2 million loan between  
11 City National Bank and Mr. Cooney.

12 Q. What is the date on which this loan was made?

13 A. The date of the document is June 24th, 2015.

14 Q. When does that mean that the loan is due?

15 A. In the first paragraph where it says the promise to pay and  
16 the payment in the second paragraph, it says that all principal  
17 plus any accrued unpaid interest would be due and payable on  
18 January 1, 2016.

19 Q. Let's go to the second page of this document and direct  
20 your attention to the section titled financial statement  
21 certification and ask you to read that to the jury.

22 A. Financial statement certification. Borrower represents and  
23 promises to lender that, (a) the most recent financial  
24 statements borrower has given to lender are true and correct in  
25 all respects, (b) they fairly represent borrower's financial

I6B5gal2

Shapiro - direct

1 condition as of the date shown on the statements, and (c) no  
2 material adverse change has occurred in the borrower's  
3 financial condition since that date. Borrower further  
4 represents and promises to lender that the most recent federal  
5 income tax return and all schedules attached to such return  
6 "federal tax return," that I have given to the lender, are a  
7 true and correct copy of such federal tax return filed with the  
8 Internal Revenue Service for the tax period ending on the date  
9 indicated in such federal tax return.

10 Q. At the time that Mr. Cooney signed this promissory note,  
11 who was the most recent personal financial statements on file  
12 with City National Bank?

13 A. The one that we reviewed earlier in this testimony from  
14 January of 2015.

15 Q. Let's go to the third page of this document, please, and if  
16 you look at the statement in bold above the signature line  
17 financial condition, let me ask you to read that as well.

18 A. Financial condition. By signing this authorization, I  
19 represent and warrant to lender that the information provided  
20 above is true and correct and that there has been no material  
21 adverse change in my financial condition as disclosed in my  
22 most recent financial statement to lender. This authorization  
23 is dated June 24, 2015.

24 Q. Now, can you remind us, when was this loan due?

25 A. January 1st, 2016.

I6B5gal2

Shapiro - direct

1 Q. What happened when it came due?

2 A. Mr. Cooney was unable to repay the loan at that point.

3 Q. Let me pull up, just for the witness, the Court, and the  
4 parties, Government Exhibit 418, please. Do you recognize this  
5 e-mail?

6 A. Yes.

7 Q. How do you recognize it?

8 A. 418 is an e-mail that was sent from Matthew Fillman to  
9 myself.

10 MS. MERMELSTEIN: The government offers Government's  
11 Exhibits 418.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 418 received in evidence)

14 BY MS. MERMELSTEIN:

15 Q. Let's go to the bottom e-mail in that chain from  
16 Mr. Fillman to Mr. Cooney on January 14th of 2016. Let me ask  
17 you to read just the first three paragraphs.

18 A. Bevan, sorry I missed your call. Let me know what you are  
19 thinking as far as repayment. I know the Code Rebel stock has  
20 dropped even further. Not sure what your thoughts are on its  
21 longer term prospects. I am also not sure where you are on the  
22 re-registration of the Wakpamni Town Center bonds. If these  
23 were consolidated with the first offer and are truly trading,  
24 they would be good collateral. The original request with the  
25 clear understanding there would be no extensions, as both the

I6B5gal2

Shapiro - direct

1 stock and bonds, were not acceptable collateral under credit  
2 policy. I know the stock is well below the loan payoff amount.

3 Q. Then let's go up further in the chain, please, Mr. Fillman  
4 forwards that to you. What is Mr. Fillman asking for?

5 A. Think you can sell a 90-day extension or short clear? Or  
6 90-day interest only and \$100,000 a month thereafter? Expect  
7 we can pay in full or at a minimum 50 percent in 90 days.  
8 Happy for him to be on the hook monthly in exchange for the 90  
9 days. Call me when you can.

10 Q. How does Mr. Fillman respond?

11 A. That was Mr. Fillman's e-mail to me, so my response was:  
12 Give the plan of sources of funds if we stretch this out.  
13 Thanks.

14 Q. What do you mean by the plan of sources of funds if we  
15 stretch this out?

16 A. So, Mr. Fillman is asking for a 90-day extension beyond the  
17 maturity date of January 1st, 2016, and my question to him was  
18 where is the money coming from within the next 90 days.

19 Q. Can we pull up Government Exhibit 419 for the witness,  
20 Court and parties, please?

21 Do you recognize this e-mail?

22 A. I do.

23 Q. Is it an e-mail from your e-mail account?

24 A. Yes, it is.

25 MS. MERMELSTEIN: Government offers Government Exhibit

I6B5gal2

Shapiro - direct

1 419.

2 THE COURT: It will be admitted.

3 (Government's Exhibit 419 received in evidence)

4 BY MS. MERMELSTEIN:

5 Q. In we can publish that to the jury, please?

6 Starting at the bottom e-mail from you to Matthew F.  
7 at Fulton Management, who is Matthew F. at Fulton Management?

8 A. Matthew Fillman.

9 Q. What do you write to him?

10 A. I ask him to please call the broker and see how much you  
11 can get to sell this and how long it would take to get the  
12 money.

13 Q. How does he respond?

14 A. It's not there anymore. He moved it when they could not  
15 list a market price. Already checked, that was Rich Isaacs who  
16 used to work with Gwen/Dan and Merchantile.

17 Q. When you asked Mr. Fillman to call the broker and see how  
18 much you could get to sell this, what was the "this" you are  
19 referring to?

20 A. The \$5 million Wakpamni Town bonds.

21 Q. What did you understand him to be telling you was his  
22 response?

23 A. That it was no longer with the original broker that had  
24 held it the year before where he had given me a statement  
25 showing where the money was and the one that had confirmation

I6B5gal2

Shapiro - direct

1 from that particular broker that he was holding that bond. So,  
2 what Mr. Fillman is telling me the broker Rich Isaacs doesn't  
3 hold the bond anymore.

4 Q. Did you understand from this e-mail that Mr. Cooney didn't  
5 own the bond at all anymore or just that it was in a different  
6 account of Mr. Cooney's?

7 A. Different account.

8 Q. Did there come a time that you met in person with  
9 Mr. Cooney in connection with the failure to repay the loan?

10 A. Yes, there was.

11 Q. Who else was at that meeting?

12 A. At that meeting from City National Bank were myself, my  
13 direct supervisor Patricia Wheeler, and a representative from  
14 our special assets department. From Mr. Cooney's side there  
15 was Mr. Cooney and there was Eric Fulton.

16 Q. What was discussed at that meeting?

17 A. What was discussed at the meeting was that the loan had  
18 come due and our expectations were to understand how he was  
19 intending to pay us back.

20 Q. Was there any discussion about the Code Rebel shares?

21 A. Yes, there was.

22 Q. What was discussed?

23 A. There was a number of discussions of why Code Rebel shares  
24 still had a restriction against trading against them; that he  
25 was not able to sell Code Rebel shares while that restriction

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Shapiro - direct

1 was on, and that it was imperative that the restriction get  
2 lifted so that a sufficient number of shares could be sold to  
3 repay our loan or at least as much that the value would allow  
4 to repay.

5 So, the Code Rebel was an important part of the  
6 discussion of how do you get the restriction lifted and can you  
7 turn those shares over to City National Bank where we can do an  
8 orderly or a rushed liquidation to repay our loan.

9 Q. Was there any discussion of the Wakpamni bonds in that  
10 meeting?

11 A. There was.

12 Q. What was the nature of that conversation?

13 A. We asked the question why can't you simply sell the bonds  
14 and pay us back? Mr. Cooney's response was he doesn't have  
15 them anymore, he never really had them, he had to pledge them  
16 as collateral for someone else. But, those are off the table,  
17 he doesn't have them anymore.

18 Q. Let me direct your attention to Government Exhibit 423 and  
19 let's just look at the attachment, please. What is this?

20 A. This is a new personal financial statement created by  
21 Mr. Cooney dated March 21st, 2016.

22 Q. What prompted the submission of a new personal financial  
23 statement?

24 A. When Mr. Cooney was not able to repay the loan and City  
25 National Bank was to consider alternative means or methods to

I6B5gal2

Shapiro - cross

1 repay our loan, we asked for updated personal financial  
2 information from him at that point in time.

3 Q. Will you go all the way to the end of this and look at the  
4 section list being long term liabilities.

5 A. Yes.

6 Q. Do you see the entry loan to/from Thorsdale Fiduciary in  
7 the amount of \$5,407,000?

8 A. Yes.

9 Q. Was your receipt of this document the first time you  
10 learned that Mr. Cooney had a loan in that amount?

11 A. Yes, it was the first time.

12 Q. Sitting here today, has City National ever received  
13 repayment of the loan?

14 A. We received approximately \$80,000 of the \$1.2 million. The  
15 rest was a loss.

16 Q. So a loss of more than \$1.12 million?

17 A. Correct.

18 MS. MERMELSTEIN: No further questions, your Honor.

19 THE COURT: Cross-examination.

20 MS. NOTARI: If I can just have a moment, your Honor?

21 CROSS EXAMINATION

22 BY MS. NOTARI:

23 Q. Good morning, Mr. Shapiro.

24 A. Good morning.

25 Q. You testified that you came to know Mr. Cooney because he

I6B5gal2

Shapiro - cross

1 was a client of yours for many years, correct? He was a client  
2 of City National Bank?

3 A. Correct.

4 Q. And Mr. Cooney was a long-standing customer of  
5 Fulton & Meyer, correct?

6 A. Correct.

7 Q. And Fulton & Meyer was owned by Eric Fulton?

8 A. At that point in time co-owned by Eric Fulton.

9 Q. Co-owned, right.

10 And eventually Eric Fulton went on his own and opened,  
11 he changed the name to Fulton Management, correct?

12 A. Correct.

13 Q. And it's fair to say that you had a very long-standing  
14 relationship with Fulton Management?

15 A. Yes.

16 Q. And Matthew Fillman, who worked for Fulton Management, was  
17 previously a banker at City National Bank?

18 A. Correct.

19 Q. And how many years did you work with Matthew Fillman?

20 A. I worked with Matt for approximately 17 years, both at City  
21 National and at our previous employer Wells Fargo Bank.

22 Q. And, as far as you know, during the time that Matthew  
23 Fillman worked with you, Fulton & Meyer was actually a client  
24 of City National Bank?

25 A. That is correct.

I6B5gal2

Shapiro - cross

1 Q. And it is fair to say that a large percentage -- you said  
2 that you had two to three hundred customers from  
3 Fulton & Meyer, correct?

4 A. Correct.

5 Q. Now, you were assigned to the entertainment division of  
6 City National Bank?

7 A. I am.

8 Q. Are you still part of that division?

9 A. I am.

10 Q. And, in fact, Fulton & Meyer represents a lot of athletes,  
11 celebrities. They do a lot of work in the entertainment field?

12 A. They do.

13 MS. MERMELSTEIN: Objection.

14 THE COURT: Overruled.

15 BY MS. NOTARI:

16 Q. And, Mr. Cooney was referred to your division because he  
17 was a customer of Fulton & Meyer, correct?

18 A. That is correct.

19 Q. But also because he owned The Viper Room and he did a lot  
20 of investing in the entertainment industry?

21 MS. MERMELSTEIN: Objection.

22 THE COURT: I will allow it.

23 THE WITNESS: I had no prior knowledge of that. I'm  
24 sorry.

25 BY MS. NOTARI:

I6B5gal2

Shapiro - cross

1 Q. Okay.

2 Now, your knowledge of Mr. Cooney was that he was an  
3 investor?

4 A. He was, quote unquote, a deal maker.

5 Q. And, can you give us an explanation as to what you mean by  
6 that?

7 A. That he was acting as a quasi-investment banker to find  
8 buyers and sellers and put the deal together and get paid a  
9 commission for putting buyers and sellers together.

10 Q. And, in fact, he did some work promoting IPOs, correct?  
11 Taking stocks public?

12 A. I have no personal knowledge of that.

13 Q. So, and it is a fair description to say that Fulton & Meyer  
14 were his business managers?

15 A. That is correct.

16 Q. In fact, you call them a business management company?

17 A. I do.

18 Q. And, in addition to doing his bidding for loans helping him  
19 to get loans, they also did his accounting, correct?

20 MS. MERMELSTEIN: Objection.

21 THE COURT: Sustained.

22 BY MS. NOTARI:

23 Q. Do you know if, as part of your inquiry into this loan, did  
24 you have to obtain verification of, for example, Mr. Cooney's  
25 tax returns?

I6B5gal2

Shapiro - cross

1 A. Yes.

2 Q. And were they able to provide that information to you?

3 A. Yes.

4 Q. And, you just referred to Government Exhibit 423, an asset  
5 and liabilities sheet. As far as you know Fulton & Meyer  
6 prepared that, correct?

7 A. I would say that the first four pages on the City National  
8 Bank form, that it appears that Mr. Cooney signed, it could  
9 have been prepared by Mr. Cooney but the following pages that  
10 list a balance sheet on it, the final two pages of this  
11 document are consistent with other documents that I have seen  
12 prepared by Fulton Management.

13 Q. So, it was your understanding -- in fact, that document was  
14 sent to you by Matthew Fillman, correct?

15 A. Yes.

16 Q. So, it is your understanding that that document was  
17 prepared by them?

18 A. That this particular document pages -- the last two pages  
19 were prepared by Fulton Management.

20 Q. And, it is fair to say that Mr. Cooney had several accounts  
21 with City National Bank?

22 A. I don't recall how many accounts he had with City National  
23 Bank. I clearly know that he had at least one.

24 Q. He had a securities account, correct?

25 A. I'm not aware because we weren't holding the Code Rebel

I6B5gal2

Shapiro - cross

1 shares, nor were we holding the municipal bonds so I'm not  
2 positive whether he had an active City National Securities  
3 account.

4 MS. NOTARI: Your Honor, may I approach the witness?

5 THE COURT: Okay.

6 Q. Defendant's Exhibit 3580; does that refresh your  
7 recollection or is that something you have seen before?

8 A. This is the City National Securities application to open up  
9 a brokerage account dated October of 2014.

10 Q. So that doesn't refresh your recollection?

11 A. I am not an employee, so --

12 Q. You are not entirely sure if he had a securities account?

13 A. I don't know if it was open at the point in time in  
14 question but he appears to have had an account that was open in  
15 October of 2014.

16 Q. And in addition to that he had other business accounts, he  
17 brought other business to City National Bank, correct?

18 A. I don't know if he brought them. Fulton & Meyer, Fulton  
19 Management certainly brought other accounts that Mr. Cooney was  
20 a signer on, I believe. One of them was Code Rebel itself.

21 Q. This was not the first loan that Mr. Cooney obtained from  
22 City National Bank. Let's first refer to the January 2015, the  
23 \$100,000 line of credit. This was not the first loan that  
24 Mr. Cooney obtained, correct?

25 A. He had one previous to that for \$200,000.

I6B5gal2

Shapiro - cross

1 Q. And that particular loan did not go into delinquent status?

2 A. No, it did not.

3 Q. And it's fair to say that at the time that Mr. Cooney was  
4 applying for these loans he had good credit?

5 A. That is correct.

6 Q. And you made inquiry as to his, again, you made inquiry as  
7 to his tax returns?

8 A. Yes.

9 Q. And regards to the loan, the \$1.2 million loan you in fact  
10 verified that in 2012 he made almost \$1.7 million?

11 A. I'm not aware in 2015 whether I looked at 2012 tax returns  
12 as the basis of judgment. What we would be looking at tax  
13 returns for would be to see does he have the recurring or  
14 consistent or predictable income to be able to pay us back, and  
15 at the point in time of \$1.2 million he had no reliable cash  
16 flow income. So, using tax returns would have been pretty  
17 moot.

18 Q. But you did attempt to, you did ask Matthew Fillman for  
19 information as to his AGI?

20 A. As far as I can remember, certainly.

21 Q. I will come back to this question.

22 And so, your primary point of contact for Mr. Cooney  
23 was actually Eric Fulton, correct?

24 A. Correct.

25 Q. And Eric Fulton was the owner of Fulton & Meyer?

I6B5gal2

Shapiro - cross

1 A. Co-owner of Fulton & Meyer.

2 Q. Co-owner. He was the top of the chain of command?

3 A. He had a partner at that time, they were equal partners.

4 Q. Before, I would say, early 2016, you didn't have much  
5 contact with Mr. Cooney, correct?

6 A. Correct.

7 Q. Most of the business that he conducted was conducted on  
8 behalf of his business managers, correct?

9 A. That is correct.

10 Q. So, if he needed something they would call him or they  
11 would e-mail you and you would talk about what his needs were?

12 A. That is correct.

13 Q. Now, there came a time in, and you referenced Government  
14 Exhibit 408 and 409 and those documents referenced Mr. Cooney's  
15 Wakpamni bonds?

16 A. Correct.

17 Q. And, initially, you were contacted because Fulton & Meyer  
18 wanted to deposit the bonds in your accounts, correct? They  
19 wanted you to take custody of them?

20 A. At City National Securities, correct.

21 Q. But it was determined that for whatever reasons you were  
22 unable to do that, correct?

23 A. Correct.

24 Q. It is not uncommon that sometimes, with certain kinds of  
25 bonds, that it is difficult to take custody of them?

I6B5gal2

Shapiro - cross

1 A. That would be correct.

2 Q. And, in fact, eventually -- well, Mr. Cooney physically  
3 delivered the bonds to you, do you recall that, to City  
4 National Bank?

5 A. I do not recall that.

6 Q. So, the bonds at one point were -- if I could just refer  
7 you to Government's Exhibits 403? It might just be easier if I  
8 could approach? If you could look at that?

9 A. Okay.

10 Q. Does that refresh your recollection?

11 A. I understand what that document is requesting but I have no  
12 recollection of that transaction from October of 2014.

13 Q. So you have no memory of -- but it is fair to say that  
14 early on there was discussion about Mr. Cooney's Wakpamni  
15 bonds, correct?

16 A. Yes.

17 Q. Now, there came a time, you said, that in approximately  
18 February 4, 2015 you were contacted by Fulton & Meyer because  
19 Mr. Cooney was seeking a \$100,000 line of credit?

20 A. Correct.

21 Q. And an application was forwarded to you from Matthew  
22 Fillman which is being referenced as Government Exhibit 405?

23 A. Not quite an application but it's a personal financial  
24 statement.

25 Q. Okay, a personal financial statement.

I6B5gal2

Shapiro - cross

1 Do you remember if you actually forwarded this to  
2 Mr. Fillman or he typically has one in his office?

3 A. He may have a blank form. I may have sent him a blank  
4 form. Either way, our form has not changed in many years.

5 Q. Now, this is a very standard form, correct?

6 A. Correct.

7 Q. In fact, anybody that is applying for an individual line of  
8 credit or a joint line of credit with their spouse would have  
9 to fill out this form?

10 A. It would be this form or a similar one. It is a formal  
11 application that has the same information listed on it.

12 Q. Did you ever see an e-mail from Matthew Fillman as part of  
13 the e-mail thread where --

14 MS. MERMELSTEIN: Objection, your Honor, to this being  
15 referenced.

16 THE COURT: Sustained.

17 BY MS. NOTARI:

18 Q. Typically, this financial statement, when it is filled out  
19 by a borrower, it is not always the ultimate financial  
20 statement that is used in connection with a loan, correct?

21 A. Why? I don't understand that question.

22 Q. Well, in this particular instance, this was the only  
23 financial statement that was used in connection with the  
24 \$100,000 loan?

25 A. Yes, it was.

I6B5gal2

Shapiro - cross

1 Q. And, in fact, it was filled out on January 28th, 2016?

2 A. '15.

3 Q. I'm sorry; 2015.

4 A. Correct.

5 Q. And part of this application, there were -- Mr. Cooney was  
6 required to fill out his income and he was required to fill out  
7 his assets, correct?

8 A. We don't always make them fill out the income section if we  
9 are using tax returns, but in this particular case he did fill  
10 out his income as well as his assets and liabilities.

11 Q. And he also filled out the fact that, he included as part  
12 of the package, verification of his assets, correct?

13 A. Whether he gave that to me or Mr. Fillman did, somebody  
14 did.

15 Q. In fact, you are not entirely sure if Mr. Cooney filled  
16 this out or if Mr. Fillman filled this out, correct?

17 A. My understanding is that Mr. Cooney signed this and Matthew  
18 Fillman forwarded it to me after he signed it.

19 Q. And it is fair to say that as -- and Matthew Fillman  
20 forwarded to you the attachments verifying the assets, correct?

21 A. Correct.

22 Q. So, as part of the assets you can see that there was, in a  
23 statement from Wilson Davis & Company which verified that  
24 Mr. Cooney had 1 million shares of stock which was worth  
25 approximately \$1.9 million, right?

I6B5gal2

Shapiro - cross

1 A. Correct.

2 Q. And he also had, there was an investment statement in the  
3 NETX investor account which showed the Wakpamni bonds in his  
4 name, correct?

5 A. Correct.

6 Q. And those were worth also \$5 million?

7 A. Correct.

8 Q. And the financial statement was dated January 28, 2015?

9 A. Correct.

10 Q. And this was the only financial statement that was  
11 submitted in connection with the application for \$100,000,  
12 correct? \$100,000 line of credit?

13 A. That is correct.

14 Q. Is it fair to say that you said the Wakpamni bonds were a  
15 source of secondary payment?

16 A. Correct.

17 Q. And as far as you know, the Wakpamni bonds were private  
18 placement bonds?

19 A. As far as I knew they were bonds that could be bought,  
20 sold, or traded.

21 Q. Okay. And typically --

22 If I could just get my drink of water?

23 THE COURT: Sure. Go ahead.

24 Q. Typically, as far as collateral, a bond like this is not a  
25 preferred asset over something like cash, correct?

I6B5gal2

Shapiro - cross

1 A. No. We prefer to take stocks or bonds or cash as  
2 collateral versus doing a loan unsecured, but because we could  
3 not custody the bonds, because the stock had a restriction  
4 against trading on it, we could not take either of them as  
5 collateral.

6 Q. The loan that was ultimately given to Mr. Cooney was a  
7 \$100,000 -- it was ultimately a \$100,000 loan and as far as you  
8 know the loan started on February 17th, 2015 and it expired --  
9 the maturity date was one year, it expired February 17th,  
10 2016.?

11 A. Yes. That's my understanding.

12 MS. NOTARI: Your Honor, this is Defendant's Exhibit  
13 3755 and we would move this into evidence.

14 THE COURT: Any objection?

15 MS. MERMELSTEIN: No objection, your Honor.

16 THE COURT: It will be admitted.

17 (Defendant's Exhibit 3755 received in evidence)

18 BY MS. NOTARI:

19 Q. Now, at some point you testified that after Mr. Cooney --  
20 let's just go back to the hundred thousand dollar line of  
21 credit. This was an unsecured loan?

22 A. Unsecured line of credit, correct.

23 Q. And there was no collateral tied to this loan, correct?

24 A. Correct.

25 Q. Now, is it true that the bonds were not acceptable

I6B5gal2

Shapiro - cross

1 collateral under City National Bank's credit policy?

2 A. That is correct.

3 Q. Can you just explain that to us?

4 A. The bonds could not be custodied by City National  
5 securities. We would have required them to be custodied by  
6 City National securities in order to be able to take it as  
7 collateral. So, without our ability to custody, no collateral.

8 Q. Now, in addition to the other documentation, Mr. Cooney  
9 represented that he had \$5 million of life insurance. Was that  
10 verified?

11 A. No.

12 Q. I'm sorry?

13 A. Not that I can recall, no.

14 Q. Okay.

15 But, it is fair to say that you had a close  
16 relationship with Matthew Fillman and if you needed additional  
17 verification, you would ask him and he would do whatever he  
18 could to provide that to you, correct?

19 A. Certainly.

20 Q. And fair to say that you had a very solid relationship of  
21 trust?

22 A. Had a very solid relationship of trust with Fulton & Meyer,  
23 correct.

24 Q. Now, on January 28th, 2015, at the time that Mr. Cooney  
25 applied for the \$100,000 line of credit, it is fair to say

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Shapiro - cross

1 that, based on that application, he would not have qualified  
2 for a \$1.2 million loan, correct?

3 A. At that point in time there is no even discussion of that  
4 and I would hate to answer in the hypothetical.

5 Q. I'm sorry?

6 A. I would not want to hypothesize at that point in time  
7 because nobody had requested a \$1.2 million loan.

8 Q. But subsequently there was a change in his circumstance and  
9 he had a stock that was worth \$12 million?

10 MS. MERMELSTEIN: Objection.

11 THE COURT: I will allow it.

12 Do you know the answer to that?

13 THE WITNESS: Yes. At the point in time that he asked  
14 for \$1.2 million, the Code Rebel stock was valued at  
15 approximately \$12 million.

16 BY MS. NOTARI:

17 Q. Even at that point you said it was a crappy loan?

18 A. There was a restriction on his ability to sell that stock.  
19 It was indicated to me that the restriction was going to be  
20 lifted in December of 2015 so it was that leap of faith that  
21 the restriction would be lifted, he would be able to sell  
22 enough stock to be able to pay back \$1.2 million and that it  
23 would take something really bad going on for the value to drop  
24 below \$1.2 million from \$12 million.

25 Q. Now, at some point you indicated that on April 1st, 2015,

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Shapiro - cross

1 you were contacted by Fulton & Meyer to see if you could  
2 provide a medallion guarantee of Mr. Cooney's WLCC bonds,  
3 correct?

4 A. I don't know what the bonds were but I was asked to provide  
5 a medallion guarantee.

6 Q. And there was several e-mails from Alexis Gluckman and she  
7 asked if you could personally meet with Mr. Cooney at your  
8 office so that you could do the medallion transfer of his  
9 bonds, correct?

10 A. Correct.

11 Q. You said that this was an irrevocable transfer of the  
12 bond's power on the bond so that essentially that would  
13 transfer bond power from Mr. Cooney to the entity where he was  
14 placing the bonds, correct?

15 A. It was transferring, selling, or assigning from Mr. Cooney  
16 to the place that he was placing them.

17 Q. And she provided you the form in advance of that meeting?

18 A. Correct.

19 Q. And that particular form said he was transferring the bond  
20 to Burnham?

21 A. Transferring, assigning, or selling to Burnham.

22 Q. And Mr. Cooney showed up at your office at about one day  
23 and you met with him, you signed the medallion guarantee,  
24 correct?

25 A. Correct.

I6B5gal2

Shapiro - cross

1 Q. And, subsequently, a messenger picked up document?

2 A. That I don't recall.

3 Q. I'm sorry?

4 A. I don't recall if a messenger picked up the document or  
5 not.

6 Q. Now, at some point in May 27, 2015, you received another  
7 e-mail from Alexis Gluckman and she informed you -- by the way,  
8 Alexis Gluckman was Mr. Cooney's account manager?

9 A. Ms. Alexis Gluckman was his account manager at  
10 Fulton & Meyer.

11 Q. So she also was a person that would contact you on behalf  
12 of Mr. Cooney and ask you for his needs, correct?

13 A. Correct.

14 Q. There was no one particular person that was exclusively  
15 working on his behalf?

16 A. No. It was -- to the best of my recollection it was Alexis  
17 Gluckman, Matthew Fillman, it was Eric Fulton.

18 Q. And fair to say that they were all reputable?

19 A. Yes.

20 Q. Now, on May 27, 2015, Alexis Gluckman contacted you and she  
21 informed you that the original medallion guarantee for the form  
22 you had filled out for Burnham provided an incorrect name or  
23 the wrong name, they wanted to actually change that, and  
24 another appointment was made for them to come to your office;  
25 correct?

I6B5gal2

Shapiro - cross

1 A. That is correct.

2 Q. And Mr. Cooney, you made another appointment, he came to  
3 your office and this particular time the bond was transferred  
4 to Bonwick Capital?

5 A. That is correct. Transferred, sold, or assigned.

6 MS. NOTARI: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MS. NOTARI:

9 Q. Do you recall signing that?

10 A. I do.

11 Q. Can you just read the top of that document?

12 A. Irrevocable stock or bond power. For value received, the  
13 undersigned does/do hereby sell, assign, and transfer to  
14 Bonwick Capital Partners, Limited.

15 Q. Could we bring that up on the screen?

16 MS. MERMELSTEIN: Are you offering it.

17 MS. NOTARI: Yes, I am offering this into evidence.

18 THE COURT: Any objection?

19 MS. MERMELSTEIN: No, your Honor.

20 THE COURT: It will be admitted. Now you can bring it  
21 up on the screen.

22 MS. NOTARI: 3162B, it is the same document.

23 Your Honor, this is also, it is the same document, it  
24 is also being identified as 3162B. I'm fine to admit this one  
25 into evidence.

I6B5gal2

Shapiro - cross

1 THE COURT: Any objection to using this version?

2 MS. MERMELSTEIN: I don't think it is the same  
3 document but no objection to the admission of 3162B.

4 MS. NOTARI: We can resolve this.

5 THE COURT: It sounds like no objection in any event,  
6 so 3162B will be admitted.

7 (Defendant's Exhibit 3162B received in evidence)

8 BY MS. NOTARI:

9 Q. Mr. Shapiro, this document says clearly it is a irrevocable  
10 stock or bond transfer to Bonwick Capital Partners and it is  
11 dated May 28th, 2015, correct?

12 A. Correct.

13 Q. Now, this transfer of bond power this was for, your  
14 understanding, for the Wakpamni bond?

15 A. No, I did not say that.

16 Q. Okay. So --

17 A. This is a \$5 million bond with a QSIP on it. It doesn't  
18 have any reference to a name of a bond.

19 Q. But it was your understanding that Mr. Cooney did own a  
20 \$5 million?

21 A. It was my understanding that he owned a \$5 million bond,  
22 yes.

23 Q. And this was signed on May 28th, 2015, correct?

24 A. Correct.

25 Q. And that was after he had obtained the \$100,000 line of

I6B5gal2

Shapiro - cross

1 credit?

2 A. Correct.

3 Q. This was before he signed the promissory note for the  
4 \$1.2 million loan?

5 A. Correct.

6 Q. Now, you said that, in your understanding, the effect of a  
7 medallion guarantee is like a notary?

8 A. It is simply guaranteeing his signature, correct.

9 Q. And it is actually required, in most instances, in order  
10 for there to be a transfer of bond power?

11 A. That would be correct.

12 (Continued on next page)

I6B7GAL3

Shapiro - Cross

1 Q. And since you were Mr. Cooney's own personal banker, it was  
2 not unusual for his business manager to call upon you to  
3 provide this kind of service?

4 A. That's correct.

5 Q. Did people typically call you up off the street and say,  
6 oh, can you provide a medallion guarantee?

7 MS. MERMELSTEIN: Objection.

8 THE COURT: Sustained. You know what, we're just  
9 going to take a one minute break now, and anyone who needs to  
10 stand and stretch or use the restroom can do so.

11 Maybe we will make this our morning break after all,  
12 so why don't we take five minutes instead.

13 (Recess)

14 MS. NOTARI: Your Honor, may we approach? I don't  
15 want to say it in front of the witness.

16 THE COURT: Yes, go ahead.

17 MS. MERMELSTEIN: I don't think Mr. Schwartz is here.

18 THE COURT: He is here. We are just waiting for Mr.  
19 Galanis.

20 (Continued on next page)

21  
22  
23  
24  
25

I6B7GAL3

Shapiro - Cross

1 (At the side bar)

2 MS. NOTARI: Your Honor, I think now that this witness  
3 has testified about his trust with Matthew Fillman, allowing  
4 these e-mails in as far as he is an agent of Mr. Cooney, that  
5 this e-mail -- I should be able to get into evidence that he  
6 told Mr. Cooney when he --

7 THE COURT: Who is he?

8 MS. NOTARI: I'm sorry, Matthew Fillman told  
9 Mr. Cooney when he sent him the application, sure, I can work  
10 something out, but you can take a minute and complete the  
11 attached, big round numbers, not too detailed. I mean it's  
12 just --

13 THE COURT: Why would this witness now about that?

14 MS. NOTARI: It's not that this witness would know  
15 that. I think the document should be admissible.

16 THE COURT: But what's the evidentiary basis for  
17 getting the document in?

18 MS. NOTARI: That it's --

19 THE COURT: Do you want to be heard on this?

20 MS. MERMELSTEIN: I think a couple things. One, this  
21 witness is not on this e-mail. There is zero indication that  
22 he has ever seen or knows about it, and so this is not an issue  
23 for him now.

24 THE COURT: Do you want to listen to this? Go ahead.

25 MS. MERMELSTEIN: I think as a preliminary matter this

I6B7GAL3

Shapiro - Cross

1 is not an e-mail that this witness is on; there is no  
2 indication that he knew anything about it. The fact that  
3 Mr. Fillman was Mr. Cooney's agent doesn't mean that Mr.  
4 Shapiro knew about all of Mr. Fillman and Mr. Cooney's  
5 communications.

6 And so we have been following a procedure in this  
7 trial throughout where you can't put into evidence anything  
8 that the witness is not on on the cross-examination of that  
9 witness.

10 Ms. Notari thinks there is a basis to admit this  
11 e-mail in the defense case. We certainly are not going to  
12 dispute that it's an authentic e-mail, but it cannot come in  
13 now, and it's not appropriate to ask this witness anything  
14 about it.

15 THE COURT: That's why I asked you initially, why is  
16 it you think this witness knows anything about this?

17 MS. NOTARI: Well, it's not that this witness. It's  
18 just that the document should come in, the e-mail should come  
19 in.

20 THE COURT: So then we will talk about it in the  
21 defense case.

22 MR. SCHWARTZ: I just want to say I don't care about  
23 this document, but I've made this point a few times.

24 When an exhibit properly comes into evidence there are  
25 some occasions where it's just not appropriate and it's

I6B7GAL3

Shapiro - Cross

1 misleading for a witness to testify about an entire course of  
2 dealings, and simply because they weren't on a communication,  
3 for that communication to be excluded until two weeks later in  
4 the defense case.

5 Sometimes -- I don't know if this is such a time -- I  
6 have no opinion on this -- but I think there may be other times  
7 that are coming up in the next day or two where it's just  
8 absolutely critical that an exhibit that everyone agrees should  
9 come into evidence needs to come in to complete the story.

10 THE COURT: Well, if everyone agrees that the exhibit  
11 should come into evidence, I agree with you.

12 MS. MERMELSTEIN: Wait, wait, because I very strongly  
13 disagree with that. This has been an ongoing effort by the  
14 defense to cut off the government case and force the government  
15 to put on a case the way they want. That's not how trials go.  
16 It is of course always the case that evidence comes in in bits  
17 and pieces. I would love to have the jury hear it in a  
18 coherent narrative where we put on one witness for five minutes  
19 and then a different witness. We don't do that.

20 THE COURT: No, my point was that if there are  
21 exhibits that you stipulated to the admissibility of those  
22 exhibits, and you have somebody who is testifying, and you want  
23 to ask them a question about that exhibit on cross-examination,  
24 it should be proper to do that if there is a stipulation, the  
25 exhibit is in evidence, right, to ask that person about that

I6B7GAL3

Shapiro - Cross

1 exhibit. This witness we have no reason to believe knows  
2 anything about this exhibit.

3 MR. SCHWARTZ: Nobody is talking about wasting  
4 people's time.

5 MS. MERMELSEIN: But what Mr. Schwartz said as a  
6 general principle where something is a real document, he should  
7 be able to show it to someone who is not on it as a way to try  
8 and indicate to the jury in the middle of the government's case  
9 that he thinks they're missing something. That's wrong. If  
10 the witness is on, and you want to ask a witness about it, of  
11 course they can be asked on cross.

12 THE COURT: Well, that's what I'm talking about. I'm  
13 talking about if it's proper to ask a witness, but you have no  
14 reason to believe this witness --

15 MS. NOTARI: I do. I do. My point is that he is  
16 going to -- he has already said crappy loans are us, and that  
17 in the end we're going to get to the point where relations  
18 broke down and that he was upset with Matthew Fillman for his  
19 shoddy work on this. He trusted Matthew Fillman. And this  
20 is -- he should be able to look at this and say, you know, is  
21 this acceptable? Is this acceptable that you relied on a  
22 financial statement -- his business manager ultimately relied  
23 on a financial statement which now the government is arguing,  
24 you know, is the reason Mr. Cooney should be convicted in a  
25 federal trial. He should be able to look at this and say, you

I6B7GAL3

Shapiro - Cross

1 know, in his course of practice if this is an acceptable line  
2 of communication to a client. Did he sanction this? Is this  
3 something that he would sanction, this comment? I think that's  
4 acceptable.

5 MS. MERMELSTEIN: I disagree. He did not know about  
6 this communication. It's not for him to opine on the  
7 acceptability of communications between business managers and  
8 their clients.

9 And let's be clear, what Ms. Notari is trying to say  
10 is Mr. Cooney was sort of misled into thinking he didn't have  
11 to disclose everything because he was told to use round  
12 numbers. He didn't disclose a \$5 million loan; it's not  
13 relevant.

14 MS. NOTARI: He did disclose a \$5 million loan. This  
15 is the financial statement in regards to the \$100,000 line of  
16 credit.

17 THE COURT: I don't think this is a proper witness. I  
18 mean do you want to call Mr. Fillman? You can do that.

19 MS. MERMELSEIN: Your Honor, can I say one other thing  
20 while we are at sidebar, which is Ms. Notari has tread very  
21 close to the line, and I have been trying not to object.

22 THE COURT: I know, and I did not -- I should have  
23 known that that was coming on that one objection, and I didn't  
24 see it.

25 When you're getting into Code Rebel, you should be

I6B7GAL3

Shapiro - Cross

1 careful.

2 Go on.

3 MS. MERMELSTEIN: Nothing. I don't want to draw  
4 attention to it. We're trying to honor your Honor's ruling.  
5 But getting into Code Rebel, and even into Flikmedia, which was  
6 another one of these same things, is treading very closely to  
7 the line of falsely suggesting to the jury something that's not  
8 true. And we're trying to navigate this carefully, but I just  
9 want to say that I don't want to surprise anyone, I think Ms.  
10 Notari should be very careful here, because we're getting too  
11 close to the line.

12 MS. NOTARI: The only other thing I'm going to say  
13 about Code Rebel is it's nothing to do with Code Rebel. It's  
14 just after the fact when there was the resettlement, part of it  
15 was he assigned his bond power to City National Bank so that  
16 they could liquidate this stock.

17 MS. MERMELSTEIN: No, he didn't.

18 MS. NOTARI: He did.

19 MS. MERMELSEIN: No, he refused to sign over the Code  
20 Rebel shares --

21 MS. NOTARI: No, he did.

22 MS. MERMELSEIN: -- and instead he transferred the  
23 shares out of City National.

24 MS. NOTARI: He signed -- there was a meeting, and he  
25 signed over his bond power.

I6B7GAL3

Shapiro - Cross

1 MS. MERMELSTEIN: No, there was a meeting in which he  
2 said he would do it and then he refused to sign it.

3 Look, you can ask those questions if you want. I  
4 don't think they're actually relevant to this, but that's fine.  
5 I don't think it triggers a Code Rebel pump and dump problem to  
6 talk about the transfer of the shares, so that's fine.

7 THE COURT: All right.

8 (Continued on next page)

I6B7GAL3

Shapiro - Cross

(In open court)

STEVEN SHAPIRO, resumed.

CROSS-EXAMINATION (Continued)

BY MS. NOTARI:

Q. Welcome back, Mr. Shapiro. Where we left off, we were talking about Mr. Cooney, about May 20, 2015, Matthew Fillman contacted you to see if he could secure a \$1.2 million bridge loan on behalf of Mr. Cooney; is that correct?

A. Correct.

Q. And this was approximately four months after Mr. Cooney had already obtained a \$100,000 line of credit?

A. Correct.

Q. And the basis of that loan was because he had a stock and it increased in value, correct?

A. The basis of our grant --

Q. Let's focus on what was previously admitted into evidence as Government Exhibit 411.

A. OK.

Q. Now, if we start --

MS. MERMELSTEIN: Your Honor, sorry. Can we approach?

THE COURT: Yes.

MS. MERMELSTEIN: And can we take that down, please.

THE COURT: Sure.

(Continued on next page)

I6B7GAL3

Shapiro - Cross

1 (At the sidebar)

2 MS. MERMELSTEIN: Ms. Notari I think is about to ask  
3 this witness about a portion of an e-mail that I very  
4 explicitly skipped in asking questions. I frankly hadn't  
5 realized that line was in there until it was up, and so I moved  
6 on. It says that the stock price was -- I can't remember  
7 exactly the language, but sort of, you know, the IPO was five,  
8 and it's now trading at three to five times that. I think  
9 we've all strenuously tried to avoid that issue. Ms. Notari  
10 has already talked about, I think her first question was  
11 increased in price.

12 MS. NOTARI: All right. I'm just going to go -- first  
13 of all, the document is in evidence, isn't it? Didn't you move  
14 it into evidence?

15 MS. MERMELSTEIN: Yes, but I think there is a  
16 difference. As we've all agreed, there is evidence in the RSB  
17 statements.

18 THE COURT: Can you redact that reference?

19 MS. MERMELSEIN: We can, yes.

20 MR. SCHWARTZ: Throughout the exhibits the government  
21 introduced -- I'm not faulting them -- but there are references  
22 to the stock going up, going down, this stock was more than  
23 enough to pay because of the loan to value.

24 MS. NOTARI: I'm not going to talk about that. I just  
25 want to focus on what is not in the e-mail. I just want to --

I6B7GAL3

Shapiro - Cross

1 THE COURT: Can you do that without showing it to the  
2 jury right now?

3 MS. NOTARI: Sure. So I'm not even going to go  
4 over -- I mean this is really kind of a dance, let me tell you.  
5 It's a dance.

6 THE COURT: I know. Look, if you want it could come  
7 in, that's fine too, right?

8 MS. NOTARI: I don't even want to call it Code Rebel.  
9 I'm just trying to just get through this and do my dance.

10 THE COURT: Just do it carefully. So we will redact  
11 that line anyway.

12 MS. MERMELSTEIN: Yeah. And we can talk.

13 (Continued on next page)  
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I6B7GAL3

Shapiro - Cross

1 BY MS. NOTARI:

2 Q. This is an e-mail thread regarding May 20, 2015 and Matthew  
3 Fillman is on this e-mail.

4 A. Correct.

5 Q. And it's only you and Matthew Fillman.

6 A. Correct.

7 Q. And there is discussion about -- this is the crappy loans  
8 are us e-mail, and you subsequently ask Mr. Fillman what is the  
9 basics of said exciting loan request.

10 A. Correct.

11 Q. And I take it you guys are friends, and this is sort of an  
12 informal way that you kind of banter on your e-mails.

13 A. Correct.

14 Q. It's not unusual -- did you have a personal relationship  
15 outside of work?

16 A. Mr. Fillman has been a friend for many, many years.

17 Q. Yes, so it wasn't uncommon for you to joke around on  
18 e-mails, correct?

19 A. Not uncommon.

20 Q. I take it he doesn't really believe that you provide crappy  
21 loans.

22 A. He knows that it has to be a sound loan, otherwise we're  
23 not doing it.

24 Q. OK. On this particular e-mail you're discussing the basis  
25 for the loan request, and he sets forth what he thinks are his

I6B7GAL3

Shapiro - Cross

1 reasons regarding the stock, and there is nothing in that  
2 e-mail about the WLCC bonds, correct?

3 A. That is correct.

4 Q. And there is no mention in this whole e-mail thread about  
5 the bonds, correct?

6 A. That is correct.

7 Q. OK. Now, at some point you e-mailed Mr. Fillman, or you  
8 communicated with him that you were prepared to offer  
9 Mr. Cooney a \$1.2 million loan, and I just want to talk about  
10 the terms of that loan.

11 Now, this was a six month loan that commenced in  
12 January -- in June of 2015, and it expired in January of 2016,  
13 correct?

14 A. Correct.

15 Q. And it's fair to say that -- is this unusual for a loan to  
16 be in this amount, \$1.2 million, for such a short period of  
17 time?

18 A. No, you characterized it properly in your prior statement  
19 where you called it a bridge loan. It's a short term loan  
20 bridging the timing of one event to another event.

21 Q. And it's fair to say that the purpose of the loan, as you  
22 understood it, was to help Mr. Cooney pay for personal expenses  
23 and tax obligations, correct?

24 A. That is correct.

25 Q. And the reason why there was a six month restriction was

I6B7GAL3

Shapiro - Cross

1 specifically because there was a six month restriction on the  
2 stock that was expected to be lifted, and at the time that it  
3 was lifted Mr. Cooney would be able to sell his stock and pay  
4 off his CNB loan, correct?

5 A. Correct.

6 Q. And the hope was that he would not only pay off the \$1.2  
7 million loan but that he would pay off his previous loan,  
8 correct?

9 A. No. The \$1.2 million loan, \$190,000 of those proceeds were  
10 to pay off his prior two loans so all he had left was the \$1.2  
11 million loan.

12 Q. And it's fair to say that based on Mr. Cooney -- this was a  
13 restricted stock. As far as you know, Mr. Cooney's previous  
14 loan in 2012, was that also -- did that also involve a  
15 restricted stock?

16 MS. MERMELSTEIN: Objection.

17 THE COURT: I will allow that.

18 A. Not as far as I know. It was an unsecured \$200,000 loan  
19 that he had from years before, and his \$100,000 loan had no  
20 condition of a restriction being lifted; it was a personal line  
21 of credit.

22 Q. Now, I take it that in terms of your assessing whether you  
23 were going to give Mr. Cooney this loan, we talked about before  
24 that you made certain requests from Matthew Fillman, including  
25 you asked for his W-2s, you asked for tax returns. Is that

I6B7GAL3

Shapiro - Cross

1 typical?

2 A. Yes, it is.

3 Q. And you did that in this case.

4 A. Yes.

5 Q. And just to refresh your recollection, just for the  
6 witness, Government Exhibit 420?

7 A. 420 is not in my book.

8 Q. We're trying to get it for you.

9 A. OK.

10 Q. Is there a second page on that?

11 MS. NOTARI: Your Honor, if I could have just one  
12 moment.

13 THE COURT: Sure.

14 MS. NOTARI: We're going to get back to this.

15 Q. And again, Mr. Cooney, do you recall what his credit rating  
16 was?

17 A. I do not recall.

18 Q. But it's fair to say that he had good credit?

19 A. My recollection is that he had good credit, correct.

20 Q. And as far as the terms of the loan, you did not take  
21 possession of Mr. Cooney's stock certificate?

22 A. I did not.

23 Q. But he was required to deposit the stock certificate in a  
24 City National Securities account?

25 A. No, that was at his discretion.

I6B7GAL3

Shapiro - Cross

1 Q. That was at his discretion?

2 A. Initially when we granted the loan there was no requirement  
3 that he deposit those stocks with City National Securities. In  
4 fact City National Securities at that point couldn't take them  
5 because of the restriction on the stock.

6 Q. OK. Now it's fair to say that you viewed -- you testified  
7 previously that this was what you would consider a risky loan.

8 A. There were elements of risk to this transaction. I would  
9 not have done it if it were a risky loan, but there weren't the  
10 normal underwriting criteria to this loan. It wasn't a person  
11 that had predictable cash flow to be able to repay a loan of  
12 this size, and therefore we were 100 percent reliant on either  
13 the liquidation of the stock or the liquidation of the bond.

14 Q. And is it fair to say that if Mr. Cooney was just the  
15 average person who walked off the street without his  
16 long-standing reputation and knowing Fulton & Meyer, that you  
17 probably would not have agreed to this loan?

18 MS. MERMELSTEIN: Objection.

19 THE COURT: Sustained.

20 Q. It's fair to say that all of the factors, as far as you  
21 considered -- Mr. Cooney's credit rating, his long-standing  
22 relationship with City National Bank, the fact that he had  
23 previously made good on his loans -- and your relationship with  
24 Fulton & Meyer, were all factors you considered in granting  
25 this loan?

I6B7GAL3

Shapiro - Cross

1 A. Those were some of the factors, correct.

2 Q. Now, I'd like to focus on Government Exhibit 414.

3 Now, this was the actual promissory note that  
4 Mr. Cooney signed, and he signed this on June 24, 2015,  
5 correct?

6 A. I'm not sure if he signed it that date. That's the date  
7 that the loan documents were dated, but he did not put a date  
8 on any of these documents.

9 Q. OK. And again this document, you forwarded the promissory  
10 note to Mr. Cooney, and it was forwarded to him by Matthew  
11 Fillman, and Fulton & Meyer was involved in this process, and  
12 ultimately he was brought in to sign the note, correct?

13 A. I don't know if he was brought in to sign the note. Our  
14 typical protocol would be to send this information to Fulton &  
15 Meyer, and Fulton & Meyer would obtain the signatures of their  
16 clients.

17 Q. Now, you previously we went to page 2. If you could just  
18 go to the section where it says financial statement  
19 certification.

20 A. Yes.

21 Q. Now, this particular promissory note was based on the  
22 financial statement that was filed in January of 2015 with  
23 regard to the \$100,000 line of credit, correct?

24 A. That is correct.

25 Q. So in January 2015 there was \$100,000 line of credit, and

I6B7GAL3

Shapiro - Cross

1 there was a personal statement that was filed in connection  
2 with that, correct?

3 A. Correct.

4 Q. And with regard to this particular promissory note, you did  
5 not ask Mr. Cooney to prepare or sign another financial  
6 statement.

7 A. No, we were relying on the one from January.

8 Q. So now when you say you relied, you, Matthew Fillman, that  
9 decision was made by Mr. Cooney's representative and you,  
10 correct?

11 MS. MERMELSTEIN: Objection.

12 THE COURT: Sustained.

13 Q. Who made that decision?

14 MS. MERMELSTEIN: Objection.

15 THE COURT: Sustained.

16 Q. It's fair to say that you could have asked Mr. Cooney to  
17 prepare a new financial statement, correct?

18 MS. MERMELSTEIN: Objection.

19 THE COURT: That I will allow.

20 A. It is our normal protocol to accept personal financial  
21 statements --

22 Q. Sorry. I can't hear you.

23 A. It is our normal protocol to accept personal financial  
24 statements that are dated within six months of the new loan  
25 request.

I6B7GAL3

Shapiro - Cross

1 Q. Now, this financial statement specifically says that there  
2 has been no material adverse change occurred in borrower's  
3 financial condition since that date. Is that correct?

4 A. That is correct.

5 Q. And it's fair to say that if someone is suddenly in a  
6 position where they're owning stock that is valued at \$12  
7 million, that that is a material change in their financial  
8 circumstances?

9 MS. MERMELSTEIN: Objection.

10 THE COURT: Sustained.

11 Q. At no time did you make any attempt to have Mr. Cooney file  
12 a new statement, correct?

13 A. I did not ask for a new statement, correct.

14 MS. NOTARI: Your Honor, if I could just --

15 THE COURT: Yes.

16 Q. Now, Mr. Cooney's loan on the \$1.2 million matured on  
17 January 1, 2016?

18 A. Correct.

19 Q. And as far as you know, during the time that the loan was  
20 current, Mr. Cooney was servicing the loan?

21 A. He was making the interest payments monthly, correct.

22 Q. And at some point in early of 2016 you contacted Fulton  
23 Management at this time, and there was discussion about the  
24 fact that the loan was in delinquent status, correct?

25 A. Correct.

I6B7GAL3

Shapiro - Cross

1 Q. And initially you dealt almost exclusively with  
2 Mr. Cooney's business manager at Fulton & Meyer regarding  
3 repayment of the loan.

4 A. Correct.

5 Q. And it's fair to say that the majority of the discussions  
6 and the ultimate meeting on February 23, 2016 were now with  
7 Eric Fulton, correct?

8 A. The majority of the discussions were with Matthew Fillman  
9 and Eric Fulton.

10 Q. So they were both involved. And Eric Fulton participated  
11 in the meeting.

12 A. He did.

13 Q. And is there any reason why Matthew Fillman did not  
14 participate in that meeting?

15 A. It was up to Eric Fulton.

16 Q. There was an e-mail where Matthew Fillman --

17 MS. MERMELSTEIN: Objection.

18 THE COURT: Sustained.

19 Q. Now, at some point you learned from Mr. Cooney's business  
20 manager that he was having difficulty lifting the restriction  
21 on the stock.

22 A. Correct.

23 Q. And it's fair to say that there was cordial discussion  
24 about working out repayment of this loan.

25 A. Initially there was cordial discussion, correct.

I6B7GAL3

Shapiro - Cross

1 Q. And you explained to Mr. Cooney and Eric Fulton that the  
2 loan was being referred to special assets, correct?

3 A. Correct.

4 Q. It was not being referred to a collection agency.

5 A. It was our internal department, special assets department.

6 Q. And it was determined that the primary source of repayment  
7 for the loan which was the stock was now less worth than what  
8 Mr. Cooney owed.

9 A. Correct.

10 Q. The value of the stock had gone down.

11 A. Correct.

12 Q. And the restriction was still not lifted.

13 A. Correct.

14 Q. And it's fair to say that there were efforts on behalf of  
15 yourself and Mr. Cooney to get the restriction lifted, correct?

16 A. I'm aware of my efforts, correct.

17 Q. Now, at some point Mr. Cooney -- you e-mailed Mr. Cooney  
18 and Eric Fulton -- I'm sorry -- you e-mailed Eric Fulton and  
19 you said that we really --

20 MS. MERMELSTEIN: Objection.

21 THE COURT: Why don't you rephrase the question.

22 Q. At some point you discussed with Eric Fulton the fact that  
23 you thought it would be helpful to have a personal meeting?

24 A. Correct.

25 Q. And in fact Mr. Cooney cooperated, and he came to your

I6B7GAL3

Shapiro - Cross

1 office with Eric Fulton, correct?

2 A. Correct.

3 Q. And that was on February 23, 2016, correct?

4 A. Correct.

5 Q. And during that meeting your supervisor was also present?

6 A. Correct.

7 Q. And who else was present?

8 A. Representative from our special assets department and a  
9 gentleman by the name of Mel Rineking.

10 Q. During that meeting there was discussion about how the  
11 restriction on the stock, how you could effectively accomplish  
12 that.

13 A. It was our intention to have Mr. Cooney give the stock to  
14 City National Bank and to do everything possible to assist with  
15 the lifting of the restriction so that we could sell the shares  
16 of stock for whatever value we could get to partially repay the  
17 \$1.2 million loan.

18 Q. So the hope was that he would transfer power of -- his  
19 power of the stock to you -- and you would be able to get the  
20 restriction lifted and liquidate the stock.

21 A. We could not lift the restriction on our own; we needed his  
22 cooperation to assist with that.

23 Q. And during that meeting he ultimately signed a document  
24 which transferred power to you.

25 A. I'm not aware of that particular document. Do you have

I6B7GAL3

Shapiro - Cross

1 that for me to review?

2 Q. Well, if we could just review your -- at some point in the  
3 past, in January -- you met with the government several times  
4 to prepare for your testimony here?

5 A. I spoke with them. I didn't meet personally with them.

6 Q. And one of your -- and all of your meetings were by video,  
7 or conference, phone conference?

8 A. Phone conference. Only one was video.

9 Q. OK. And that first meeting was on June 16, 2016?

10 A. Roughly.

11 Q. OK. If I could refer you to -- this is just for the  
12 witness to refresh his recollection -- 3553-1, the second page.  
13 I refer you to the third paragraph. If you could just read  
14 that paragraph.

15 A. It's not up on my screen yet.

16 Is this the highlighted paragraph in question?

17 Q. Yes.

18 A. "Shapiro began direct communications" --

19 MS. MERMELSTEIN: Objection to the reading of the  
20 document.

21 THE COURT: Yes, sustained.

22 You shouldn't read it.

23 Do you have a question?

24 MS. NOTARI: Yes, I want to know if this refreshes his  
25 recollection.

I6B7GAL3

Shapiro - Cross

1 THE COURT: Just read it to yourself. You don't have  
2 to read it out loud.

3 And the question is if it refreshes his recollection?

4 MS. NOTARI: As to whether Mr. Cooney signed the  
5 document --

6 THE COURT: -- which transferred the power over; is  
7 that correct? Is that the question?

8 MS. NOTARI: Yes, the transfer of power to City  
9 National Bank.

10 A. Yes, this refreshes my memory. Thank you.

11 Q. So can you please -- now let's go back for a moment. You  
12 said that there was a meeting with Fulton Management, Patricia  
13 Wheeler and Mel Rineking at special assets at City National?

14 A. Correct.

15 Q. Are you talking there about the February 23, 2016 meeting?

16 A. Yes, I am.

17 Q. And in that meeting you spoke about how the restriction on  
18 the stock could be lifted, correct?

19 A. Correct.

20 Q. And there was a document prepared in that meeting which  
21 Mr. Cooney signed.

22 A. My recollection is that he signed a similar irrevocable  
23 stock or bond power that would transfer the ability to sell  
24 that stock to City National Bank.

25 Q. So Mr. Cooney actually in fact did cooperate and sign that

I6B7GAL3

Shapiro - Cross

1 document.

2 A. My recollection is yes.

3 Q. Now, it's fair to say that this meeting with the parties  
4 you've described was not recorded, correct?

5 A. Correct.

6 Q. And there were no videos -- no video recording, no audio  
7 recordings, there was no tape?

8 A. Correct.

9 Q. And no notes were taken at this meeting?

10 A. Not as far as I can find out.

11 Q. And your supervisor Patricia Wheeler was present?

12 A. She was.

13 Q. And it's fair to say at this point feelings were cordial  
14 but there was some agitation on your part that the loan had  
15 failed -- the loan was in delinquent status.

16 A. I would say that once he revealed that he didn't own the  
17 bonds, the discussion was no longer cordial.

18 Q. OK. Now, when you say he said he didn't own the bonds, it  
19 became clear that the source -- the bonds were no longer  
20 available as a source of repayment.

21 A. That is correct, and it was at that meeting that was the  
22 first that we learned of that.

23 Q. That was the first you learned about it, but in fact you  
24 did medallion guarantee his bonds to transfer them to Bonwick  
25 Capital back on May 28, 2016, correct?

I6B7GAL3

Shapiro - Cross

1 A. As I previously testified, I guaranteed his signature via  
2 medallion guarantee stamp with a CUSIP number and a \$5 million  
3 amount listed. I had no recollection, knowledge, whatsoever  
4 that these particular bonds that he had committed to sell  
5 should he have a problem selling Code Rebel stock.

6 Q. Now, it's fair to say that there was no legal requirement  
7 that you had to medallion guarantee Mr. Cooney's bonds,  
8 correct?

9 MS. MERMELSTEIN: Objection.

10 THE COURT: Sustained.

11 Q. It's fair to say that Mr. Cooney could have gone to someone  
12 else to have -- if he were trying to hide the fact that he was  
13 transferring his bonds, he could have gone to a different bank  
14 to get the medallion guarantee, correct?

15 MS. MERMELSTEIN: Objection.

16 THE COURT: Sustained.

17 Q. Medallion guarantee, it's a notarizing type of process,  
18 correct?

19 A. Correct.

20 Q. And any -- what are the qualifications to provide that  
21 service?

22 A. For a medallion guarantee, typically it is a bank that's a  
23 member of the New York Stock Exchange or a bank based in New  
24 York that's able to offer a medallion guarantee, and there are  
25 certain requirements for banks to be able to issue such a

I6B7GAL3

Shapiro - Cross

1 guarantee on marketable securities documents.

2 Q. Now, it's fair to say that you, Mr. Cooney and Fulton  
3 Management attempted to renegotiate an agreement for him to  
4 repay his loan.

5 A. That is correct.

6 Q. And as part of that process there were many phone calls and  
7 e-mails going back and forth?

8 A. That is correct.

9 Q. And there were certain things that Mr. Cooney was asked to  
10 provide in the way of documentation?

11 A. That was after the February 23rd meeting, not prior to  
12 that. Initially the conversations, once the loan matured, we  
13 saw one e-mail earlier today that asked for a 90 day extension  
14 of that. There were other e-mails that said that if he can pay  
15 down a significant amount of approximately \$500,000 then we can  
16 look at extending another 90 days. But the significant down  
17 payments were met with resistance, to the best of my  
18 recollection, and Mr. Cooney was insistent that we just convert  
19 the \$1.2 million to a five year repayment plan, and that was  
20 something we rejected outright.

21 Q. Well, Mr. Cooney was afraid that if he gave you the power  
22 to liquidate his stock, that you would sell it at a lower  
23 price.

24 MS. MERMELSTEIN: Objection.

25 THE COURT: Sustained.

I6B7GAL3

Shapiro - Cross

1 Q. Now, you previously referred to Government Exhibit 408 --  
2 I'm sorry -- 418.

3 A. 418 is not -- oh, I'm sorry, here it is. Got it. I've got  
4 it. I've got it.

5 Q. Do you have it in front of you?

6 A. I do.

7 Q. OK. This is an e-mail conversation with you and Matthew  
8 Fillman in January of 2016 regarding -- the subject title of  
9 the e-mail is call "matured loan"?

10 A. Yes.

11 Q. And in that discussion again it's talking about a possible  
12 strategy to repay the loan, correct?

13 A. Correct.

14 Q. And nowhere -- and this was -- Mr. Cooney was not on this  
15 thread. This was Matthew Fillman acting as his broker,  
16 correct?

17 A. Acting as his authorized agent, correct.

18 Q. And it's fair to say there were many e-mails going back and  
19 forth about different ideas about how to repay the loan.

20 A. Correct.

21 Q. And one of those ideas was that Mr. Cooney was hopeful that  
22 he could restructure the loan over a five year period.

23 A. Correct.

24 Q. And that was not acceptable to you.

25 A. Not without a principal reduction, correct.

I6B7GAL3

Shapiro - Cross

1 Q. OK. So if we refer to Government Exhibit 419, this is on  
2 February 9. Do you have that in front of you?

3 A. I do.

4 Q. This is another e-mail between you and Matthew Fillman, and  
5 it's almost one month later, February 9, 2016, correct?

6 A. February 9, 2016, correct.

7 Q. So this is almost a month after the previous e-mail that we  
8 just talked about, and in this e-mail you're still trying to  
9 figure out a plan, correct?

10 A. This particular e-mail is dealing with the bond.

11 Q. Right. And the question is asked, you know, about the  
12 bond, and you're informed that the bond is in a different  
13 place.

14 A. Correct.

15 Q. And you knew it was in a different place because you signed  
16 the medallion guarantee several months earlier.

17 A. Once again, I did not know that we were talking about this  
18 particular bond. We have a whole lot of months going by here  
19 where nobody told me the bond is not there anymore.

20 Q. The bond was simply in a different place, correct?

21 A. The bond is in a different place.

22 Q. And it was not available to repay the loan, correct?

23 A. I didn't learn that until February 23, 2016.

24 Q. OK. But all of your discussions in February of 2016 were  
25 figuring out strategies to repay the loan, correct?

I6B7GAL3

Shapiro - Cross

1 A. Correct.

2 Q. And so you were trying to assess whatever assets Mr. Cooney  
3 had to repay the loan.

4 A. Correct.

5 Q. And your goal was to work with Mr. Cooney and to serve the  
6 interests of City National Bank towards repaying the loan.

7 A. That is correct.

8 Q. And the inquiry as far as the bond was just a question as  
9 far as whether it was available to repay the loan, correct?

10 A. Correct. Can I add something?

11 Q. No.

12 A. If I may. No?

13 Q. Unfortunately I'm asking the questions.

14 A. All right.

15 If I could have just one moment.

16 THE COURT: Sure.

17 Q. Now, if we could just focus on Government Exhibit 423. You  
18 said that at some point during the time when you were trying to  
19 figure out a repayment of the loan you e-mailed Matthew Fillman  
20 another financial statement. Correct?

21 A. I asked him to complete a new personal financial statement,  
22 correct.

23 Q. And this time actually a new financial statement was  
24 generated, correct?

25 A. Correct.

I6B7GAL3

Shapiro - Cross

1 Q. And this March 2016 financial statement was after the  
2 \$100,000 line of credit, and it was after the \$1.2 million  
3 loan, correct?

4 A. This is after our meeting with Mr. Cooney in February of  
5 2016, well after all of those other events.

6 Q. So at this point the purpose of the financial statement was  
7 more toward figuring out what assets he had and what loans and  
8 the liabilities in terms of repayment of the loan, correct?

9 A. Right.

10 MS. MERMELSTEIN: Object to the form.

11 THE COURT: Why don't you rephrase the question,  
12 please.

13 Q. At this point the personal financial statement that was  
14 provided to you was more about -- it was about repayment of the  
15 loan.

16 A. It was used to determine what assets and liabilities  
17 Mr. Cooney had that would be used or could be used for  
18 repayment of the loan.

19 Q. And in this -- if we could go to Government Exhibit 423.

20 Now, you said earlier that it was your understanding  
21 that the first portion -- the latter portion of this document,  
22 the last two pages which are entitled balance sheet, were  
23 prepared by Fulton & Meyer, correct?

24 A. Correct.

25 Q. And this statement is a statement of as of February 28,

I6B7GAL3

Shapiro - Cross

1 2016 Mr. Cooney's assets, correct?

2 A. Assets and liabilities, correct.

3 Q. Now in fact City National Bank was where Mr. Cooney had his  
4 business account, correct?

5 A. Can you refresh my memory.

6 Q. His business checking and savings account all came out of a  
7 City National account?

8 A. Yes. I don't know whether it was a business account or  
9 personal account.

10 Q. So you were able to verify a lot of the different entries  
11 on this chart, correct?

12 A. On the balance sheet that's listed, that was prepared by  
13 Fulton & Meyer, there is one account listed for CNB with  
14 \$7,709, and the only other that I would be able to verify for  
15 City National Bank would be on the last page under long-term  
16 liabilities the City National Bank loan of \$1.2 million. I  
17 would not have had any other way to verify the rest of the  
18 information.

19 Q. But at no time did you ask for further documentation from  
20 Fulton & Meyer, correct -- Fulton Management?

21 A. I didn't. And let me restate one thing I just said. Under  
22 other current assets of CNB MGR-200234 with a value of \$666,000  
23 and some change, that is the Code Rebel stock that we were  
24 trying to liquidate.

25 Q. OK. You relied upon Fulton Management as far as preparing

I6B7GAL3

Shapiro - Cross

1 this document in terms of its reliability?

2 A. I relied on them, and I also relied on the fact that  
3 Mr. Cooney signed the personal financial statement putting "see  
4 attached" that he would have also agreed with the information  
5 provided.

6 Q. Now on the second sheet we have the liabilities listed,  
7 correct?

8 A. Correct.

9 Q. And under one of the liabilities is in fact a loan to  
10 Thorsdale, correct?

11 A. Correct.

12 Q. Did you ask for documentation of that loan?

13 A. No, this was a result of our February 23rd meeting.

14 Q. So Mr. Cooney in fact disclosed that the bonds were an  
15 asset and that in fact there was a liability of a loan on the  
16 bonds, correct?

17 A. That he presented it in March of 2016, correct.

18 Q. And prior to March of 2016 -- you said prior to 2016 you  
19 had limited contact with Mr. Cooney. You spoke with his  
20 business managers, correct?

21 A. That is correct.

22 Q. Now, according to this balance sheet his assets are  
23 approximately \$7,973,589.78, correct?

24 A. Correct.

25 Q. And his liabilities are actually about the same.

I6B7GAL3

Shapiro - Cross

1 A. Correct.

2 Q. So it's fair to say that at that point in time Mr. Cooney  
3 was in a difficult place to pay back a \$1.2 million loan?

4 A. His total equity listed was \$810,000.

5 Q. And at some point in October of 2016 Mr. Cooney actually  
6 did renegotiate the terms of his loan. Are you aware of that?

7 A. I'm aware that there was a forbearance agreement that was  
8 agreed to which required a \$75,000 down payment and monthly  
9 payments of about \$6,000 each, and he made a couple of those  
10 payments and then stopped.

11 Q. And Mr. Cooney actually in good faith made -- the agreement  
12 required --

13 THE COURT: Sustained. Rephrase that, please.

14 Q. Mr. Cooney -- the terms of the agreement were that  
15 Mr. Cooney had to pay \$75,000 before October 14, 2016, correct?

16 A. That's my recollection, correct.

17 Q. And that would bring down the balance of the loan from \$1.2  
18 million to \$1.125 million, correct?

19 A. Plus interest and fees, correct.

20 Q. And Mr. Cooney made that payment.

21 A. He did.

22 Q. And then the additional requirements were that he make  
23 monthly payments of \$6,996.38 each month beginning November  
24 2016 and including September 1, 2021.

25 A. That is correct.

I6B7GAL3

Shapiro - cross

1 Q. And Mr. Cooney made two payments on that plan.

2 A. That is correct.

3 Q. So Mr. Cooney actually paid \$90,000 towards repaying the  
4 loan.

5 A. \$12,000 plus \$75,000. \$87,000 or so.

6 Q. So?

7 A. That's correct, about 90 is correct.

8 Q. So at some point Mr. Cooney filed for bankruptcy, correct?

9 A. That's my understanding.

10 MS. MERMELSTEIN: Objection, your Honor.

11 THE COURT: Sustained.

12 MS. NOTARI: If I could just have a moment.

13 Your Honor, I have no further questions.

14 THE COURT: OK.

15 MS. NOTARI: No further questions.

16 THE COURT: No more questions?

17 MS. NOTARI: No more.

18 THE COURT: OK, thanks. Any additional  
19 cross-examination?

20 MR. TOUGER: Not from me, your Honor.

21 THE COURT: All right.

22 CROSS EXAMINATION

23 BY MS. HARRIS:

24 Q. Good afternoon, Mr. Shapiro. My name is Laura Harris, and  
25 I represent Devon Archer. Just so the record is clear, can I

I6B7GAL3

Shapiro - Redirect

1 ask you to confirm that you have never met Mr. Archer or  
2 communicated with him in any, shape or form?

3 A. Not aware of having met him, correct.

4 MS. HARRIS: No further questions. Thank you.

5 THE COURT: Redirect.

6 MS. MERMELSTEIN: Thank you, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MERMELSTEIN:

9 Q. Good afternoon. Just to clarify a few points. So we've  
10 talked this morning about the \$100,000 loan obtained in  
11 February of 2015 and then the \$1.2 million loan in the spring  
12 of 2015. Do I have that right?

13 A. Correct.

14 Q. With respect to the \$100,000, at the time that City  
15 National made that loan, did Mr. Cooney own the Code Rebel  
16 shares that we've discussed? Did he own them yet at that point  
17 in time?

18 A. I'm not overly familiar. He listed \$2 million on his  
19 personal financial statement, but he didn't detail whether it  
20 was Code Rebel or a different stock.

21 Q. And are you familiar with -- I think Ms. Notari showed you  
22 a document that indicated that that was a stock called  
23 Flikmedia?

24 A. I don't have a recollection of that.

25 (Continued on next page)

I6B5gal4

Shapiro - recross

1 BY MS. MERMELSTEIN:

2 Q. With respect to the \$1.2 million loan, that had a primary  
3 or secondary source of the assets that you relied on in making  
4 the loan; is that right?

5 A. That is correct.

6 Q. And what were the primary and secondary sources?

7 A. Liquidation of the Code Rebel stock was the primary  
8 repayment source. The liquidation of the muni bond was the  
9 second repayment source.

10 Q. Right there, when you say muni bond, is that the same thing  
11 as the Wakpamni bond?

12 A. Exactly.

13 Q. Was the existence of the secondary source of repayment  
14 important to City National Bank?

15 A. It was.

16 Q. And why is that?

17 A. We, very rarely, will make a single source of repayment  
18 loan, we always want a back door if something goes wrong. So,  
19 in typical case it would be a person says that here is my  
20 income, my income is sufficient to make the payments on this,  
21 but if something happens to my income I've got some assets that  
22 I can liquidate to pay off the loan. Primary is the income,  
23 secondary is going to be the assets that they own.

24 In this case he did not have any kind of reliable  
25 income or cash flow that we could count on, everything was

I6B5gal4

Shapiro - recross

1 dependent on his ability to sell the stock and that the stock  
2 retained sufficient value to pay off the \$1.2 million loan but  
3 we would not have done the loan if there weren't a backup  
4 source. We needed those Wakpamni bonds to act as the backup  
5 that if something happened with the stock, he would sell the  
6 bonds.

7 Q. Now, you talked a little bit about whether or not these  
8 assets were collateral and you have talked about how you relied  
9 on their existence in issuing the loan. Can you explain the  
10 difference between those two things?

11 A. Collateral gives the bank unilateral authority to liquidate  
12 the securities in the case of a default, so if we physically  
13 had possession of the stock, if we physically had possession of  
14 the bonds, there would have been security agreements that would  
15 have given us the right to redeem those or cash those in at our  
16 discretion should they default on the loan.

17 So, in this case we could not physically take those as  
18 collateral. They were all reliant on their words and their  
19 statements to let us know that their intention was to liquidate  
20 the stocks or liquidate the bonds upon the maturity date or  
21 before.

22 Q. Can we pull up Government Exhibit 423, quickly, and go to  
23 the liability section of the attachment?

24 Just so it is clear, I think when it was not totally  
25 clear on cross-examination, the loan to/from Thorsdale, because

I6B5gal4

Shapiro - recross

1 it is in the liability section that's a loan from Thorsdale to  
2 Mr. Cooney?

3 A. That is correct.

4 Q. Now, you were asked a little bit about whether or not  
5 Mr. Cooney signed a document empowering City National to  
6 liquidate his Code Rebel shares. Ultimately Mr. Cooney refused  
7 to allow City National to liquidate his shares, right?

8 A. That is correct.

9 Q. Ms. Notari asked you a number of questions about whether  
10 you understand from medallioning the transfer document that the  
11 Wakpamni bonds were being moved. As a preliminary matter, can  
12 you tell from a stock transfer form whether or not something is  
13 being sold versus whether or not something is just being  
14 transferred?

15 A. Not at all.

16 Q. If someone was selling the asset and \$5 million of cash was  
17 coming into their account, would that sort of put them in the  
18 same financial position, from City National's perspective, in  
19 terms of getting a loan?

20 A. They would have had no need for a loan.

21 Q. Fair enough. But if they had wanted one would that have  
22 mattered to you if it was cash versus the bond?

23 A. It would have mattered whole lot. We could have done  
24 something secured with that cash and taken the cash as  
25 collateral.

I6B5gal4

Shapiro - recross

1 Q. Now, with respect to your understanding at the time that  
2 the \$1.2 million loan was issued that Mr. Cooney owned and held  
3 the Wakpamni bonds, let me ask Mr. Wissman, can we pull up on  
4 the screen, side by side, just for Mr. Shapiro, the Court and  
5 the parties, Government's Exhibits 439 and 440?

6 Mr. Quigley, do you mind giving hard copies to  
7 counsel?

8 Do you recognize these two e-mails as e-mails from  
9 your e-mail account?

10 A. Yes, I do.

11 MS. MERMELSTEIN: The government offers Government's  
12 Exhibits 439 and 440.

13 MS. NOTARI: Your Honor, I have not seen these and  
14 I --

15 THE COURT: Okay. Take a minute to look them over.

16 MS. NOTARI: Can we approach, your Honor?

17 THE COURT: Sure.

18 (Continued next page)  
19  
20  
21  
22  
23  
24  
25

I6B5gal4

Shapiro - recross

1 (At side bar)

2 MS. NOTARI: Do you have a copy of this.

3 MS. MERMELSTEIN: Use mine.

4 MS. NOTARI: First of all, I have never seen this  
5 before and it is 404(b) evidence and it's just more of them  
6 throwing mud on the walls. What difference does it make? It  
7 is completely --

8 THE COURT: First of all, as to disclosure?

9 MS. MERMELSTEIN: These were first produced as Rule 16  
10 discovery, your Honor.

11 MR. TOUGER: Your Honor, may I make a suggestion? Can  
12 we have the jury go out and have the -- my client needs to go  
13 to the restroom.

14 THE COURT: Is this going to take a while?

15 MS. MERMELSTEIN: I have three more questions. This  
16 is the witness whose wife is ill.

17 THE COURT: He can go to the rest room if he needs to,  
18 come right back.

19 MR. TOUGER: Yes.

20 THE COURT: So, this is produced Rule 16 discovery so  
21 that's the disclosure point.

22 Go ahead.

23 MS. MERMELSTEIN: It was not marked as an exhibit, we  
24 didn't obviously offer it initially, but Ms. Notari has  
25 suggested through cross-examination that Mr. Shapiro in fact

I6B5gal4

Shapiro - recross

1 knew the bond had been transferred. These may have other bases  
2 for admissibility as well but they're his prior consistent  
3 statements that he clearly did not know that the bond had been  
4 transferred in February of 2016.

5 MS. NOTARI: That's not so much of the problem. The  
6 problem is where he is talking about, *Matt has been doing*  
7 *yeoman's work on this but we feel we are dealing with someone*  
8 *acting less honorably, all of his speculation, he is in a tough*  
9 *spot.* This needs to be redacted.

10 MS. MERMELSTEIN: That's fine. I can ask him to read  
11 it without publishing to the jury, your Honor, the portions  
12 that are relevant and we can redact that part.

13 THE COURT: So why don't you do that.

14 MR. SCHWARTZ: I am looking, there is a lot of  
15 description about the fluctuation.

16 THE COURT: These aren't going to come in.

17 MS. MERMELSTEIN: I won't offer them but I won't  
18 publish them and I will say what I'm going to have him read.

19 MS. NOTARI: What page? Let me know.

20 MS. MERMELSTEIN: I will do that right now.

21 So, on 439 I am going to have him read the February  
22 2nd e-mail from Fillman to Cooney asking if anything has  
23 progressed on the --

24 MR. SCHWARTZ: But not the paragraph above that?

25 MS. MERMELSTEIN: Just that line. I will then have

I6B5gal4

Shapiro - recross

1 him read again --

2 MS. NOTARI: This right here?

3 MR. SCHWARTZ: Here.

4 MS. MERMELSTEIN: That nothing progressed on the bond  
5 deal.

6 Then the next e-mail, *any update on the status of the*  
7 *stock removal? What about the bond deal?* And then I will  
8 elicit that sort of Cooney doesn't respond to any of these  
9 e-mails, and I will do the one at the very top again asking  
10 about the \$500,000 coming in from the bond.

11 With respect to 440, I'm going to just have him read  
12 the second paragraph where I left this is that Cooney is  
13 raising \$100,000 now out of the bond sale money in 90 days, and  
14 paragraph no. 2, proof that the order to sell his muni bonds  
15 has been made but I think some of this is nonetheless  
16 admissible but we can fight about what to redact afterwards.

17 MR. SCHWARTZ: I'm fine.

18 THE COURT: I will allow that.

19 MS. MERMELSTEIN: Thank you, your Honor.

20 MS. NOTARI: This one and what else?

21 MS. MERMELSTEIN: Where I left this, and no. 2.

22 THE COURT: Go ahead.

23 MS. MERMELSTEIN: Thank you.

I6B5gal4

Shapiro - recross

(In open court)

BY MS. MERMELSTEIN:

Q. So you were asked on cross-examination, Mr. Shapiro, a fair amount about conversations following the default of a loan, about strategies to repay the loan, right?

A. Correct.

Q. And in those conversations there was a fair amount of discussion about the possibility of selling the Wakpamni bonds, right?

A. Correct.

Q. It wasn't until that in-person meet, however, that Mr. Cooney first admitted that he didn't have them, right?

A. Correct.

Q. So, let me direct your attention to Government Exhibit 439, let's do that one first, please, Mr. Wissman. We are going to publish it for the witness, Court, and defense counsel, but the government offers 439 and 440 subject to the agreements.

THE COURT: They will be admitted, subject to those redactions.

(Government's Exhibits 439 and 440 received in evidence)

BY MS. MERMELSTEIN:

Q. Starting with 439 with your attention on page 3 of that e-mail to the February 2nd e-mail from Mr. Fillman to Bevan Cooney and to Mr. Fulton, and let me ask you to read just the

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Shapiro - recross

1 one little, the couple of lines beginning: Has anything  
2 progressed?

3 A. Has anything progressed on the bond deal? Are we likely to  
4 see any cash coming in if I can't get them to agree to nothing  
5 now?

6 Q. What do you understand this reference to the bond deal to  
7 be?

8 A. My understanding is that he was either trying to liquidate  
9 the bond, sell part of the bond, get something that was going  
10 to get a significant amount of cash.

11 Q. And when we say bonds you mean the Wakpamni bonds?

12 A. I do.

13 Q. Let's go one e-mail up on that chain to the next day,  
14 February 3rd of 2016, and let me ask you to read that e-mail  
15 from Mr. Fulton to Mr. Cooney.

16 A. In working on stock legend removal, probably a month out.  
17 The company is in the middle of a big merger and won't issue  
18 the opinion I need until merger is completed.

19 Q. I'm so sorry.

20 A. The other one?

21 Q. Yes.

22 A. Hey Bevan. Any update on the status of the stock legend  
23 removal? What about the \$500,000 bond deal? Do you have a  
24 closing date? What can we pay now? Eric.

25 Q. Looking up this chain, does Mr. Cooney respond in any

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Shapiro - recross

1 fashion to the question about the sale of the bonds?

2 A. He did.

3 Q. What does he indicate -- does Mr. Cooney respond?

4 A. Oh, I'm sorry. No. He is talking about the stock legend  
5 removal.

6 Q. And if you look at the very top e-mail on this page from  
7 Mr. Fillman to you, let me ask you to read just the first  
8 paragraph, not the second paragraph.

9 A. He left me a --

10 Q. Very top of the e-mail beginning: Okay, but please...

11 A. This is an e-mail from me to Matthew Fillman. *Okay, but*  
12 *please find out exactly how the 500,000 is coming. Did he*  
13 *issue the sell order? Who is selling? Can I get confirmation*  
14 *and expected payment date? Is the money coming into an account*  
15 *that Fulton management controls?*

16 Q. Let me stop you there.

17 When you say did he issue the sell order, what are you  
18 talking about?

19 A. He issued an order to, whatever broker was holding the  
20 bonds, to sell them.

21 Q. Let me now direct your attention to Government Exhibit 440  
22 in evidence. This is an e-mail from you to Eric Fulton and  
23 Matthew Fillman, subject Cooney.

24 Do you see that?

25 A. I do.

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Shapiro - recross

1 Q. February 8 of 2016; is that right?

2 A. Correct.

3 Q. Let me ask you to read the second paragraph beginning:

4 Where I left...

5 A. Where I left this with Matt earlier today is that Cooney  
6 was raising \$100,000 now, would have \$500,000 from bond sales  
7 in 90 days, and is requesting to pay off the rest at \$150,000  
8 per month. I have asked Matt for some proof and thus far we  
9 have nothing.

10 Q. Then let me ask you to also read the paragraph that is  
11 no. 2 beginning: Proof.

12 A. No. 2. Proof that the order to sell his muni bonds has  
13 been made and, if so, anticipated amount that will be received,  
14 by when, and whether the funds are being sent to you or will  
15 still be under Mr. Cooney's control. I also need to understand  
16 why it is taking 90 days to sell muni bonds and why it cannot  
17 be done right now.

18 Q. So, fair to say that in February of 2016 you did not  
19 understand that Mr. Cooney had in fact transferred the Wakpamni  
20 bonds and no longer owned them for many months?

21 A. That is not something that I ever understood, correct.

22 MS. MERMELSTEIN: No further questions.

23 THE COURT: Thank you.

24 Ms. Notari?

25 RECROSS EXAMINATION

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Shapiro - recross

1 BY MS. NOTARI:

2 Q. Now, the e-mails that you were just asked about,  
3 Government's Exhibits 440, 439, those e-mails were on February  
4 8th, 2016, correct?

5 A. Correct.

6 Q. And it's fair to say that you had extensive e-mail  
7 communication with Mr. Cooney after that, correct?

8 A. With Mr. Cooney directly?

9 Q. Yes.

10 A. I don't know if I would characterize it as extensive but I  
11 had a number of conversations via e-mail with Mr. Cooney after  
12 that February 23rd, 2016 e-mail.

13 Q. And these were communications with just you and Mr. Cooney,  
14 correct?

15 A. I don't recall. I would have to look to see if Fulton or  
16 Fillman were copied on them.

17 Q. If I could refresh your recollection with Defendant's  
18 Exhibit 3734, 3742, 3738, 3741, 3717, 3718? Can you please  
19 read through these e-mails?

20 A. Okay. These e-mails are from April of 2016 that were  
21 dealings between myself and Mr. Cooney, correct.

22 Q. Are you done reviewing them?

23 A. Yes, I am.

24 Q. Thank you.

25 So, these e-mails are all e-mails, communications of

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Shapiro - recross

1 just you and Mr. Cooney on April 12th, April 11th. There is  
2 numerous e-mails going back and forth where you are talking  
3 about how he can repay the loan, correct?

4 A. Correct.

5 MS. MERMELSTEIN: Objection to form and these  
6 documents are no longer in front of the witness.

7 BY MS. NOTARI:

8 Q. Do you recall these e-mails? I mean, can you speak  
9 generally about the content of the e-mails?

10 A. I can speak generally about the content of the e-mails,  
11 sure.

12 Q. So, Mr. Cooney was answering your e-mails, correct?

13 A. He was initiating some. We were having a conversation back  
14 and forth.

15 Q. And it is fair to say that if we refer to Government  
16 Exhibit 420, on February 11th, again, this is after  
17 Government's Exhibits 440 and 439 which is dated February 8,  
18 2016, correct?

19 A. Right.

20 Q. And in these e-mails you are asking about what about the  
21 bonds, correct?

22 A. What about the bonds was from February of 2016. The  
23 communication with Mr. Cooney directly with me was April of  
24 2016.

25 Q. And you said that Mr. Cooney was not answering your

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Shapiro - recross

1 questions about the bonds, correct? Is that your testimony?

2 A. I said that the first that I learned of his non-owning of  
3 these particular bonds was February 23rd, 2016 so that there  
4 was no further discussion. After that point in time we were  
5 focused solely on the Code Rebel stock.

6 Q. It is fair to say in February 2016 it was an issue,  
7 repayment of the loan, and so suddenly sources of collateral  
8 was on the table. It was now relevant discussion?

9 A. Absolutely.

10 Q. So before the loan was delinquent there was no need to talk  
11 about the bonds, correct?

12 A. He was paying, as agreed. We didn't have any discussions  
13 about repayment until we realized that he wasn't going to pay  
14 in full when it came due.

15 Q. You testified earlier that Mr. Cooney did not answer your  
16 questions about the bond, correct? Was that your testimony?

17 A. There was one e-mail in here that there is -- that was  
18 between Eric Fulton and Bevan Cooney where he asked a question  
19 about the bond and Bevan talked only about the stock and did  
20 not talk about the bond.

21 Q. Now, on February 11, 2016, you wrote Eric Fulton a letter  
22 and the subject was Bevan Cooney --

23 MS. MERMELSTEIN: Objection.

24 Q. Do you recall this e-mail?

25 MS. MERMELSTEIN: Objection.

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Shapiro - recross

1 THE COURT: I will allow that but what's your next  
2 question?

3 Well, first, you can answer it? Do you recall the  
4 specific e-mail?

5 THE WITNESS: I would have to look at it to see which  
6 one she is referencing.

7 THE COURT: Okay.

8 BY MS. NOTARI:

9 Q. If you could look at Government Exhibit 420? Just the  
10 witness?

11 A. Okay.

12 Q. If you go to the e-mail entry 12:32 a.m.?

13 A. Yes. I've got it.

14 Q. If you read the paragraph To Bevan, starting there, read  
15 that paragraph?

16 A. Bevan is not being sent that one?

17 Q. Yes. You don't have to read it, you can just read it to  
18 yourself.

19 A. Thank you. Okay.

20 Q. So, in that e-mail from you --

21 MS. MERMELSTEIN: Objection, your Honor. It is not in  
22 evidence and the government objects on hearsay grounds.

23 THE COURT: Let's have a side bar.

24 (Continued next page)

25

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Shapiro - recross

1 (At side bar)

2 THE COURT: Ms. Notari, tell me where you are going  
3 with this.

4 MS. NOTARI: Clearly there were very clear  
5 explanations that were given to him where he knows exactly what  
6 the situation is with the bond. He says paid right after this  
7 whole e-mail.

8 The government is trying to present there was no  
9 discussion, he wasn't being told about the bond and this is  
10 specifically -- he is regurgitating what they're telling him.  
11 He knows exactly what happened to the bond. He says the  
12 secondary payment source, his muni bond, now seems to have been  
13 pledged as collateral somewhere or used as an investment in one  
14 of Bevan's other deals.

15 THE COURT: Why can't she cross him on this? I mean  
16 this is an e-mail he wrote.

17 MS. MERMELSTEIN: She can ask him about it but I  
18 don't -- I think that she is just reading from the e-mail and I  
19 don't think that's appropriate.

20 THE COURT: Oh. That's fine. Yes, just ask him a  
21 question. Agreed.

22 MS. NOTARI: Thank you.  
23  
24  
25

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Shapiro - recross

1 (In open court)

2 BY MS. NOTARI:

3 Q. In this e-mail -- did you have a chance to review the  
4 paragraph?

5 A. Yes.

6 Q. So, in this e-mail you are telling Eric Fulton that the  
7 secondary repayment source, Mr. Cooney's muni bond, now seems  
8 to either have been pledged as collateral somewhere else or  
9 used as an investment in one of Bevan's other deals. In either  
10 case, the bond no longer looks like it is available to be used  
11 to repay the loans.

12 Do you recall telling him that?

13 MS. MERMELSTEIN: Objection to the reading, your  
14 Honor.

15 THE COURT: Just ask a question that if something  
16 happened at the time.

17 BY MS. NOTARI:

18 Q. Did that happen? Did you say that?

19 A. I said that.

20 Q. You said that. Okay.

21 So, it is fair to say that the fact that Mr. Cooney's  
22 municipal bonds were not available as a source of repayment was  
23 something that was just upsetting to you and you wanted him to  
24 try to have access to those bonds but he didn't, correct?

25 MS. MERMELSTEIN: Object to the form, your Honor.

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1 THE COURT: Sustained.

2 BY MS. NOTARI:

3 Q. It is fair to say that the bonds were not available for  
4 repayment?

5 A. It is fair to say, correct.

6 Q. And the basis of you telling Mr. Cooney, Mr. Fulton that  
7 information, was this information was relayed to you, correct?  
8 You weren't pulling this out of thin air?

9 A. Correct.

10 MS. MERMELSTEIN: Objection.

11 THE COURT: Sustained.

12 MS. NOTARI: No further questions.

13 THE COURT: Okay. All right.

14 MS. MERMELSTEIN: Nothing further, your Honor.

15 THE COURT: You may step down. Thank you.

16 (Witness excused)

17 THE COURT: The government can call its next witness.

18 MS. MERMELSTEIN: One moment, your Honor?

19 THE COURT: Sure.

20 (Counsel conferring)

21 MS. MERMELSTEIN: The government calls Raycen Raines.

22 RAYCEN RAINES,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

I6B5gal4

Raines - direct

1 BY MS. MERMELSTEIN:

2 Q. Good afternoon, Mr. Raines.

3 A. Hello.

4 Q. Are you a member of any Native American tribe?

5 A. Yes.

6 Q. Let me ask you to keep your voice up so everyone can hear  
7 you.

8 Which tribe are you a member of?

9 A. The Oglala Lakota Sioux Tribe.

10 Q. What is the Oglala Lakota Sioux Tribe?

11 A. It is a band of the Seven Council Fires that makes up the  
12 great Sioux nation in North and South Dakota.

13 Q. Is the Oglala Sioux Tribe sometimes referred to as the  
14 Lakota nation?

15 A. Yes.

16 Q. Is the tribe also sometimes referred to as Oglala Indians?

17 A. Yes, it can be.

18 Q. Why is that?

19 A. In the Constitution it refers to American Indians -- Native  
20 Americans originally, as Indians, and we are the Oglala band.  
21 And so, that's one of the many names that could be given us.

22 Q. When you say the Constitution, you mean the American  
23 Constitution?

24 A. Yes.

25 Q. Where is the Oglala Sioux Tribe located?

I6B5gal4

Raines - direct

1 A. In the Pine Ridge Indian reservation.

2 Q. Where is that?

3 A. In the State of South Dakota.

4 Q. Did you grow up on the Pine Ridge reservation?

5 A. No, I didn't.

6 Q. Where were you born?

7 A. I was born in Oregon.

8 Q. How did you come to be in Oregon?

9 A. All four of my grandparents belonged to their own  
10 respective Indian tribes, one of them being Pine Ridge, South  
11 Dakota, and during the federal policy of assimilation they all  
12 were moved, as children, to --

13 (audible noise)

14 THE COURT: I don't know what that is. We will find  
15 it.

16 A. All four of my grandparents were moved, as children, to the  
17 State of Oregon. There is a Native American boarding school  
18 that they all attended, and from there they met each other and  
19 had my parents and my parents had me and so we have all lived  
20 in Oregon for most -- for a lot of the time, even though we  
21 have gone back to their respective reservations.

22 Q. And so your grandparents are members of four different  
23 Native American tribes?

24 A. Yes, each one is.

25 Q. How did you become a member of the Oglala Sioux Tribe?

I6B5gal4

Raines - direct

1 A. My father is enrolled at the Oglala Sioux Tribe and I am  
2 enrolled under my father.

3 Q. What level of education have you obtained?

4 A. High school education, some college, and some licensing in  
5 insurance and estate planning.

6 Q. What did you do when you left high school?

7 A. I joined the United States Navy.

8 Q. What did you do in the Navy?

9 A. I was a master Helmsman. I drove the ships during  
10 restricted maneuvering, aircraft carrier, and guided missile  
11 cruiser. I did Panama canal. Things where it was required,  
12 more technical steering.

13 Q. How long did you serve in the Navy?

14 A. Four years.

15 Q. What kind of career path did you pursue when you left the  
16 Navy?

17 A. All four grandparents and many of my aunts and uncles,  
18 parents as well, all worked in Indian country at some various  
19 capacity, whether it was tribal leadership or healthcare  
20 education or in business, and I wanted to work in Indian  
21 country as well at some point, I just didn't know how exactly,  
22 when I got started.

23 Q. And so what did you initially do?

24 A. I apprenticed under my uncle who was an independent  
25 insurance broker and estate planner, and so I learned under him

I6B5gal4

Raines - direct

1 for many years and worked in the field for many years until I  
2 had a depth of understanding of different insurance and  
3 financial products that I thought would be of value to  
4 ultimately take into Indian country.

5 Q. Did there come a time that you began to work in Native  
6 American finance?

7 A. Yes.

8 Q. What is the difference, if any, between Native American  
9 finance and just finance?

10 A. Because Indian country has many different rules and laws,  
11 most of the financial dealings in Indian country are creative  
12 by nature because they can't get conventional financing through  
13 banks, mostly because of the trust status of the land.

14 Q. So, explain what you mean by that, that conventional  
15 financing is not available because of the trust status of the  
16 land.

17 A. So, because the lands are owned or they're under federal  
18 government ownership through the -- administered through the  
19 Bureau of Indian Affairs under the Department of Interior, so  
20 that land can't be collateralized or borrowed against which  
21 makes it very difficult for tribal projects to be financed and  
22 developed.

23 Q. Do you mean that, unlike in a traditional mortgage, the  
24 bank can't come seize land that is on the reservation if  
25 someone doesn't pay back the loan and, as a result, the bank

I6B5gal4

Raines - direct

1 doesn't want to make the loan?

2 A. That's correct.

3 Q. Does the Oglala Sioux Tribe have a tax base, the way, say,  
4 New York State does?

5 A. No.

6 Q. Why not?

7 A. Because the tribes aren't able to tax their members and  
8 that's with all reservations, really.

9 Q. Now, did there come a time that you moved from working,  
10 generally, in the Native American world to working with a  
11 particular tribal community?

12 A. Yes.

13 Q. Approximately when was that?

14 A. That was in 2011.

15 Q. And what tribe or community did you focus on working with  
16 at that point in time?

17 A. With the Oglala Sioux Tribe, the tribe I am enrolled with.

18 Q. Did you physically move to the Pine Ridge reservation?

19 A. Yes.

20 Q. How many people live on the Pine Ridge reservation?

21 A. It is one of the poorest counties in United States. It  
22 routinely rates as first or second on any given year. It has  
23 like an 80 percent or more unemployment rate, it is a very  
24 remote area of South Dakota, it is about two hours away from  
25 the nearest major city one way where people go and get their

I6B5gal4

Raines - direct

1 groceries. 80 percent of the roads are unpaved. It is one and  
2 two for diabetes rate, ranks in the highest for teen suicide,  
3 teen pregnancy. And it just has a lot of pretty dismal  
4 statistics that even get worse in winter.

5 Q. How many people live on the Pine Ridge reservation?

6 A. Approximately 45,000.

7 Q. Is that all of the members of the Oglala Sioux Tribe?

8 A. No. There is roughly 20,000 that live in surrounding  
9 townships and communities that are able to seek out work.

10 Q. Now, is the Pine Ridge reservation divided in any fashion  
11 into subdivisions of geographic regions?

12 A. Yes.

13 Q. In what fashion?

14 A. They have nine districts and then within those districts  
15 are the communities.

16 Q. And how big, as a matter of geographic size, is the Pine  
17 Ridge reservation?

18 A. It is around 3 million square acres. It is about the size  
19 of Rhode Island and Connecticut combined. Very large place.

20 MS. MERMELSTEIN: May I approach, your Honor?

21 THE COURT: Yes.

22 Q. So, you said you mentioned, I think, communities just a  
23 moment ago. What is a community?

24 A. A community is a -- it is a subdivision of a district where  
25 the bloodlines of hereditary families stay on their allotted

I6B5gal4

Raines - direct

1 lands that were originally given to them during the creation of  
2 the reservation.

3 Q. And do communities and districts have -- well, does the  
4 Oglala Sioux Tribe have a government?

5 A. Yes.

6 Q. Do districts and communities have local governments?

7 A. Yes.

8 Q. Let me ask you to look for identification at Government  
9 Exhibit 4050. We can pull that up just for the witness,  
10 parties, and Court, please. You have a hard copy in front of  
11 you, if that's easier.

12 Do you recognize that?

13 A. Yes. That's a map of the State of South Dakota.

14 Q. And does it show the correct location of the Pine Ridge  
15 Reservation?

16 A. Yes; in the bottom left-hand side of the state.

17 Q. Now, is it just the coloring on my screen or is it very  
18 hard to see the shading that demarcates the Pine Ridge  
19 Reservation on your map?

20 A. It does look a little light.

21 Q. Let me ask you to look at the hard copy in front of you.  
22 Does that accurately depict the location of the Pine Ridge  
23 Reservation in South Dakota?

24 A. Yes. It's the bottom left-hand side of the state. It goes  
25 up almost, reaches up almost to Rapid City and borders the

I6B5gal4

Raines - direct

1 Nebraska state line.

2 MS. MERMELSTEIN: The government offers Government  
3 Exhibit 4050.

4 MR. SCHWARTZ: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 4050 received in evidence)

7 BY MS. MERMELSTEIN:

8 Q. If we can publish that to the jury?

9 Then, Mr. Wissman, perhaps you can highlight where we  
10 are looking. Is there a gray area there that demarcates the  
11 Pine Ridge Reservation in the circle?

12 A. Yes. It's faint.

13 Q. And, are you a member of any particular community?

14 A. Yes.

15 Q. Which one?

16 A. The Wakpamni Lake Community.

17 Q. And if we can zoom out for a moment?

18 Where on the Pine Ridge Reservation is the Wakpamni  
19 Lake Community located?

20 A. It's on the bottom right-hand side. It's the most remote  
21 community and it borders Nebraska on the state line.

22 Q. So sort of all the way to the right bottom corner of the  
23 Pine Ridge Reservation?

24 A. Yes.

25 Q. Now, what made you move to the -- let me ask you this.

I6B5gal4

Raines - direct

1           What community did you physically move to when you  
2 moved to Pine Ridge?

3       A.   Wakpamni Lake Community.

4       Q.   What made you move to that community?

5       A.   I had family there and I was invited there by the  
6 traditional leadership.

7       Q.   What district is the Wakpamni Lake Community a part of?

8       A.   It is part of the Wakpamni District.

9       Q.   Who leads the Wakpamni Lake Community?

10      A.   President Geneva Lonehill, and there is a board.

11      Q.   And who is on the board?

12      A.   The Board is Sandy Two lance, Wilma Standing Bear is the  
13 secretary, and Deb Blue Bird is the member.

14      Q.   Now, when you first moved to Pine Ridge, was it your  
15 intention to work on behalf of the Oglala Sioux people or on  
16 behalf of the Wakpamni Lake Community?

17      A.   A little of both.

18      Q.   Did you end up principally working up for the Oglala Sioux  
19 Tribe or for the Wakpamni Lake Community?

20      A.   For the Wakpamni Lake Community.

21      Q.   Are you familiar with something called the Wakpamni Lake  
22 Community Corporation?

23      A.   Yes.

24      Q.   Is that often known as the WLCC?

25      A.   Yes.

I6B5gal4

Raines - direct

1 Q. What is it?

2 A. That is the wholly-owned subsidiary of the Wakpamni Lake  
3 Community, the political part that is focused on just  
4 commercial or private enterprise activity.

5 Q. So, the Wakpamni Lake Community leadership is the political  
6 part and the Wakpamni Lake Community Corporation is the  
7 economic development arm?

8 A. That's correct.

9 Q. How is it formed?

10 A. It is formed by the voting members of the community itself.

11 Q. Does the Oglala Tribe's Rules and Constitution permit the  
12 creation of such a corporation?

13 A. Yes. Under Article 6 of the Constitution that was drafted  
14 in 1934 it allows districts and communities to pursue economic  
15 development for the benefit of its membership.

16 Q. Who are the leadership of the Wakpamni Lake Community  
17 Corporation?

18 A. The Board as well.

19 Q. The same Board as is the political leadership?

20 A. Yes.

21 Q. Approximately when was the Wakpamni Lake Community  
22 Corporation formed?

23 A. In 2012.

24 Q. Do you have a current role with the Wakpamni Lake Community  
25 Corporation?

I6B5gal4

Raines - direct

1 A. Yes. I'm currently the CEO of WLCC.

2 Q. How long have you held that, or a similar role?

3 A. About six years.

4 Q. And how are you generally compensated for your work on  
5 behalf of the Wakpamni Lake Community Corporation?

6 A. Through a success fee that is based on the success or  
7 profitability of a project getting started and ultimately being  
8 sustainable.

9 Q. Did there come a time when you met an individual named  
10 Yanni Galanis?

11 A. Yes.

12 Q. Would you recognize him if you saw him again?

13 A. Yes.

14 Q. Let me ask you to look around the courtroom and if you see  
15 him, point him out to the jury and identify a piece of clothing  
16 he is wearing.

17 A. I see him there with the purple tie.

18 MR. TOUGER: He has identified my client.

19 THE COURT: Record shall so reflect.

20 BY MS. MERMELSTEIN:

21 Q. Thank you, your Honor.

22 When did you first meet Yanni Galanis?

23 A. In 2014.

24 Q. Where were you when you met him?

25 A. I was at a conference in Las Vegas for -- it was a tribal

I6B5gal4

Raines - direct

1 economic development conference.

2 Q. What is a tribal economic development conference?

3 A. There is a conference every year called RES. The acronym  
4 R-E-S, stands for Reservation Economic Summit. It is an annual  
5 conference where there is tribal leaders, tribal business  
6 people meeting with consultants, bankers, and vendors, all  
7 meeting over a course of about four days talking about new  
8 projects, project development, and opportunities.

9 Q. Who else -- well, how did you come to meet Mr. Galanis?

10 A. I was invited to a luncheon that was during that  
11 conference.

12 Q. And who else was there?

13 A. There was approximately seven or eight people, a couple  
14 tribal leaders, a gentleman I worked with already a guy named  
15 Steven Haynes, an attorney Tim Anderson, and a few people I  
16 didn't know.

17 Q. How did Yanni Galanis present himself?

18 A. As a businessman and project developer and person who  
19 financed and put together projects.

20 Q. What, if anything, did he say about his professional  
21 background?

22 A. Just that he had experienced developing projects in the  
23 past and developing and selling business.

24 Q. During that meeting did Yanni Galanis present a proposal  
25 involving bonds?

I6B5gal4

Raines - direct

1 A. Yes.

2 Q. And what were the general contours of that proposal?

3 A. That a tribe would be able to take advantage of a new  
4 opportunity out there regarding social responsible capital,  
5 investors that were interested in investing in Indian country  
6 as opposed to, say, a foreign country that would allow that on  
7 tribal lands to create new employment, some new income, and  
8 develop new business.

9 Q. What, if anything, did Yanni Galanis say in that meeting  
10 about the use of an annuity to structure those bonds?

11 A. The annuity would be similar -- it would be like an  
12 insurance wrapper that would protect the principal investment  
13 and generate annual income to cover the interest on the bond as  
14 well as generate additional income for the business.

15 Q. Over the course of several months following that lunch, did  
16 you continue to discuss the idea of a bond with Yanni Galanis?

17 A. Yes.

18 Q. Were there any other frequent participants in those  
19 conversations?

20 A. Yes.

21 Q. Who was that?

22 A. Steven Haynes, Tim Anderson, various business people, and  
23 specific businesses.

24 Q. How did you generally communicate with Yanni Galanis?

25 A. On the phone or in person, text message, or messenger apps.

I6B5gal4

Raines - direct

1 Q. Did you communicate by any particular messenger app?

2 A. WhatsApp, Wickr.

3 Q. And how did you come to use Wickr?

4 A. It was an invite was sent out through the app itself as a  
5 working -- for the working group to communicate.

6 Q. Who sent it out?

7 A. Yanni.

8 Q. Let's turn back to the bonds themselves. What, if  
9 anything, did Yanni Galanis tell you about the various entities  
10 that would be involved in entering the bond?

11 MR. TOUGER: Date?

12 MS. MERMELSTEIN: I am talking about the months  
13 following the Native American development conference.

14 MR. TOUGER: Are we talking about after the meeting?

15 MS. MERMELSTEIN: I'm sorry. I can't hear what you  
16 are saying --

17 MR. TOUGER: Are we talking about after the meeting.

18 MS. MERMELSTEIN: Yes, after the meeting, the months  
19 that follow.

20 THE WITNESS: I'm sorry. Can you repeat the question?

21 BY MS. MERMELSTEIN:

22 Q. I assume you can't remember each individual conversation  
23 that you had in the months that follow that first lunch; is  
24 that right?

25 A. Right.

I6B5gal4

Raines - direct

1 Q. In the course of those conversations in the months  
2 following that first lunch what, if anything, did Yanni Galanis  
3 tell you about the entities that would be involved in issuing  
4 the bond?

5 A. There would be a brokerage firm which would be the  
6 placement agent, be an insurance company, then there would be  
7 law firms representing everybody.

8 Q. And did he tell you the identity of the brokerage firm that  
9 would serve as the placement agent?

10 A. Yes.

11 Q. What was that?

12 A. Burnham Securities.

13 Q. What, if anything, did Yanni Galanis say about his own  
14 connection to Burnham Securities?

15 A. That they had generated the initial interest in the  
16 socially responsible capital and that he had a son that worked  
17 there.

18 Q. Did he tell you his son's name?

19 A. Yes.

20 Q. What was that?

21 A. Jason Galanis.

22 Q. Did you ever meet Jason Galanis?

23 A. No.

24 Q. Did Yanni himself work at Burnham Securities?

25 A. I don't believe so.

I6B5gal4

Raines - direct

1 Q. What, if anything, did you understand about how Yanni  
2 Galanis would be compensated for his involvement in structuring  
3 his bond deal?

4 A. I understood that he would receive a success fee from  
5 Burnham Securities for putting together the deal.

6 Q. During these months of discussing the bond deal, did  
7 Mr. Yanni Galanis ever mention an entity called Sovereign  
8 Nations Development Corporation?

9 A. No. Not that I recall.

10 Q. Now, you mentioned that Yanni Galanis also talked to you  
11 about an insurance wrapper or an annuity. What is an annuity?

12 A. An annuity is an insurance contract similar to a pension  
13 before it is turned on. Monies go in and have a guaranteed --  
14 to principal or interest earned and ultimately come out in a  
15 paid out schedule.

16 Q. What, if anything, did Yanni Galanis say about whether the  
17 payments by the annuity would be guaranteed?

18 A. The payments would be guaranteed for the annual interest  
19 rate to the bond owed as well as income coming out for the  
20 tribal business to help cover operating costs.

21 Q. Just so I understand, the structure was that the annuity  
22 would throw off guarantee payments to pay both the interest and  
23 payments to the tribal entity that issued the bonds?

24 A. Yes.

25 Q. Were all of the expected payments under the annuity

I6B5gal4

Raines - direct

1 guaranteed?

2 A. They all were except for their, at the end of the term, the  
3 20-year term. The funds that were based on the performance of  
4 the investment were not guaranteed. They were projected to  
5 be -- there was projected to be payment that would be at the  
6 very end but that part was variable.

7 Q. What, if anything, did Yanni Galanis tell you about who  
8 would provide the annuity?

9 A. A company called Wealth Assurance AG.

10 Q. And what did Yanni Galanis tell you what Wealth Assurance  
11 AG was?

12 A. It was a large insurance company, very reputable, had a  
13 \$80 million valuation, and has been in the insurance business  
14 for a long time.

15 MS. MERMELSTEIN: Your Honor, I'm about to turn to a  
16 new topic so I don't know if this is a logical time to break.  
17 I am also happy to keep going.

18 THE COURT: Sorry?

19 MS. MERMELSTEIN: I am about to turn to a new topic.

20 THE COURT: That is fine. I didn't hear you. That is  
21 fine. So why don't we take our lunch break now.

22 Just remember don't discuss the case and keep an open  
23 mind.

24 (Continued on next page)

I6B5gal4

Raines - direct

1 (Jury not present)

2 THE COURT: If you can come back in an hour? I will  
3 see you after lunch.

4 MR. SCHWARTZ: 2:00?

5 THE COURT: How about five to 2:00, please.

6 (Luncheon recess)

7 (Continued on next page)

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I6B5gal4

Raines - direct

## A F T E R N O O N S E S S I O N

2:00 p.m.

(Jury not present)

MR. SCHWARTZ: Can we discuss one quick thing?

THE COURT: At the side bar?

MR. SCHWARTZ: Yes, please.

THE COURT: Why don't we bring the jury in in the  
meantime.

(Continued on next page)

I6B5gal4

Raines - direct

1 (At the sidebar)

2 MR. SCHWARTZ: So it occurred to me over lunch that  
3 depending on what the government intend to do on direct, they  
4 may elicit some of the alleged misstatements that John Galanis  
5 made about the purchase of the second bond issuance by Messrs.  
6 Archer and Cooney, which was one of the two areas we had  
7 discussed as being subject to a midtrial limiting instruction  
8 about reasonable foreseeability, so I just wanted to flag if  
9 that's something they intend to elicit that may come up. This  
10 is basically from the language that your Honor dictated at the  
11 final pretrial conference.

12 MS. MERMELSTEIN: I don't intend to elicit anything  
13 that was said to him about the --

14 MR. SCHWARTZ: So I mean if they don't elicit anything  
15 about sort of the representations about demand and things like  
16 that on the second bond issuance, then that's fine.

17 MS. MERMELSTEIN: I'm going to elicit that he was told  
18 by Yanni Galanis that there was demand and that's why they  
19 should do another round of bonds but that's it.

20 MR. SCHWARTZ: Right, this was the point, there was  
21 misrepresentation that is effectively about Mr. Archer and  
22 Cooney, even though it may not say the name.

23 MS. MERMELSTEIN: I don't think that that's  
24 sufficiently correct that saying that there's demand is about  
25 them. As is now in the record, for example, Mr. Cooney was

I6B5gal4

Raines - direct

1 kind of a very late comer to buying the bonds; it appears there  
2 was a different plan first that didn't work out, so I don't  
3 think the mere fact that he said that there was demand triggers  
4 the need for this instruction, which I think is going to just  
5 be confusing.

6 MR. QUIGLEY: Especially since they've already heard  
7 about representations made in connection with -- Anderson  
8 testified about representations made in connection with the  
9 second bond issuance. There have been other witnesses who have  
10 testified about that. I think essentially doing it in this way  
11 targeted to Mr. Archer and Mr. Cooney is essentially arguing  
12 for the defense at a early juncture of the trial.

13 MS. MERMELSTEIN: Look, there are all kinds of  
14 evidentiary issues that your Honor is going to instruct the  
15 jury about that you're going to give legal instructions at the  
16 end that they will look back at the evidence. I don't think  
17 this is a basis for one now, and I think that it is a  
18 misleading suggestion that there is something that this  
19 particular evidence, in a trial that's had lots of different  
20 kind of evidence, so I think it's not necessary on the facts,  
21 it's not triggered by what the government is doing, and even if  
22 we were eliciting more, I would object to it.

23 MR. SCHWARTZ: This was subject of a ruling. I mean I  
24 didn't mean to come over and start a big thing. This was  
25 already the subject of a ruling. We said that there were going

I6B5gal4

Raines - direct

1 to be two and only two instances. One is this. This is the  
2 first time that we're hearing about the misrepresentations  
3 being made to an alleged victim here. And the other is the  
4 form ADV, which may not come out again. I think I was sort of  
5 slow to react when it came back out on the redirect of Mr.  
6 Dunkerley because the ruling sort of came in about the scope of  
7 ADV after his direct was closed and before the redirect. So,  
8 we may not come back to the form ADV, but this is the other  
9 instance that was subject to your Honor's ruling, so I'm simply  
10 proposing the language that's used.

11 THE COURT: I mean I said that I would give it. I  
12 will give it. So you can stand and let me know.

13 Do you have any objection specifically to the language  
14 here?

15 MR. QUIGLEY: I think the fact that it says Mr. Archer  
16 and Mr. Cooney. I mean if you want to give a generic  
17 instruction along these lines, but again this is more in the  
18 way of argument about specific coconspirators in this case. If  
19 you want to say please keep in mind evidence about acts by  
20 other people is admissible against the codefendants only if you  
21 find those people were members of the conspiracy and that the  
22 acts taken by those other people were in furtherance of the  
23 conspiracy, and reasonably foreseeable to the defendants. I  
24 think highlighting --

25 MR. SCHWARTZ: That's a little bit artificial. I mean

I6B7GAL5

Raines - Direct

1 there are three people on trial. The evidence is going to be  
2 that one of those people made the statements, and so the  
3 instruction should be clear that we're talking about the other  
4 two people. It's not argument; it's just using proper nouns to  
5 make things accessible to the jury.

6 THE COURT: I will think about it.

7 (Continued on next page)

I6B7GAL5

Raines - Direct

1 (In open court)

2 (Jury present)

3 RAYCEN RAINES, resumed.

4 DIRECT EXAMINATION (Continued)

5 BY MS. MERMELSTEIN:

6 Q. When we broke before lunch we were talking about Wealth  
7 Assurance AG and Burnham Securities and the entities that were  
8 to be involved in the proposed bond transaction. I want to  
9 move on to talking about who represented the various parties in  
10 the transaction. Who represented Burnham Securities?

11 A. Burnham Securities was represented by the attorney Tim  
12 Anderson.

13 Q. Did you know Tim Anderson prior to this transaction?

14 A. Yes.

15 Q. Had he previously represented the Wakpamni Lake Community  
16 Corporation in other deals?

17 A. Yes, he did.

18 Q. Why did he end up representing Burnham and not the Wakpamni  
19 Lake Community Corporation?

20 MR. TOUGER: Objection.

21 A. Burnham Securities needed --

22 THE COURT: I'm sorry. What's your understanding of  
23 why he represented Burnham?

24 MR. TOUGER: Your Honor, with all due respect,  
25 wouldn't that call for a hearsay conclusion?

I6B7GAL5

Raines - Direct

1 MS. MERMELSTEIN: Why don't I rephrase it.

2 THE COURT: Why don't you rephrase.

3 Q. Did you communicate with Mr. Anderson about whether he  
4 would represent the Wakpamni Lake Community Corporation or  
5 Burnham Securities?

6 A. Yes.

7 Q. And since Mr. Anderson had previously represented the  
8 Wakpamni Lake Community Corporation, did he need your approval  
9 in order to represent someone else in this transaction?

10 A. Yes.

11 Q. And in those conversations, what was your understanding of  
12 why Mr. Anderson was going to represent Burnham Securities?

13 A. Mr. Anderson would represent Burnham because it involved a  
14 Native American Indian law, and Wakpamni Lake Community  
15 Corporation had a number of other law firms that represented  
16 us, therefore, Burnham Securities needed somebody familiar with  
17 Indian law, and it was deemed that Tim Anderson would go on to  
18 the Burnham side.

19 Q. Now, who represented the Wakpamni Lake Community  
20 Corporation in this transaction?

21 A. Greenberg Traurig.

22 Q. And had the Wakpamni Lake Community Corporation also worked  
23 with Greenberg Traurig before?

24 A. Yes.

25 Q. What particular lawyers worked on this transaction from

I6B7GAL5

Raines - Direct

1 Greenberg Traurig?

2 A. Heather Dawn Thompson and Mike McGinnis.

3 Q. What is your current relationship with Ms. Thompson?

4 A. I'm married to Heather Thompson.

5 Q. Were you married at the time?

6 A. No.

7 Q. What was your relationship then?

8 A. Just dating at that time.

9 Q. And did the Wakpamni Lake Community Corporation know about  
10 your relationship?

11 A. Oh, yeah. Yes.

12 Q. Who was the main point of contact between the Wakpamni Lake  
13 Community Corporation on the one hand and the Greenberg Traurig  
14 attorneys who were working on the bond project?

15 A. Myself.

16 Q. And how did you generally keep the board apprised of  
17 developments?

18 A. I would see them mostly every day back home, and then we  
19 would have weekly meetings as well as board meetings that were  
20 once or twice a month depending on documents or project  
21 development.

22 Q. As the bond transaction solidified, how much money was the  
23 Wakpamni Lake Community Corporation set to receive at the time  
24 that the bonds closed?

25 A. Approximately \$2 million.

I6B7GAL5

Raines - Direct

1 Q. And how much after that?

2 A. Approximately \$200,000 per year on the anniversary date.

3 Q. And are those exact numbers or approximations?

4 A. Approximate.

5 Q. What did the community plan to do with the money?

6 A. We were developing a distribution center within the  
7 community grounds that would function as a -- it was a  
8 distribution warehouse that met the minimum requirements to be  
9 like a free trade zone distribution center that would be used  
10 for importing and exporting goods to other reservations.

11 Q. What if any are the economic advantages of locating a  
12 distribution warehouse on a Native American reservation?

13 A. So, on a reservation it's denoted as a HUB zone or a  
14 Historical Underutilized Business zone, which gives it some tax  
15 advantages as well as minority preference in the competitive  
16 market advantage for sales to either the federal government or  
17 other tribal governments.

18 Q. Did that bond issuance come to fruition?

19 A. Yes.

20 Q. Now, in connection with issuing the bonds, did the Wakpamni  
21 Lake Community Corporation waive its sovereign immunity?

22 A. No.

23 Q. And perhaps I should have asked, was there a partial waiver  
24 of sovereign immunity?

25 A. Yes.

I6B7GAL5

Raines - Direct

1 Q. Did that waiver apply to just the Wakpamni Lake Community  
2 Corporation or to the Oglala Sioux Tribe as a whole?

3 A. Just WLCC.

4 Q. And were the bonds recourse or nonrecourse?

5 A. Nonrecourse.

6 Q. What does that mean?

7 A. That means that the project is indemnified from other  
8 projects or corporations. You can only pursue in litigation  
9 just that one project.

10 Q. Meaning if the bonds fail, the investors could only go  
11 after profits from the warehouse business but not other  
12 endeavors of the Wakpamni Lake Community.

13 A. Yes.

14 Q. Who approved the bond transaction on behalf of the Wakpamni  
15 Lake Community?

16 A. The board.

17 Q. And who actually executed the documents?

18 A. Both Geneva and myself.

19 Q. And when you say yourself, were you a signatory to the  
20 documents?

21 A. Yes, I had permission from our President Lonehill to sign  
22 documents to move projects forward.

23 Q. Just so we're clear, when you said you had permission to  
24 sign documents, were you signing on her behalf in your name or  
25 in your own name?

I6B7GAL5

Raines - Direct

1 A. In her behalf.

2 Q. And was that authorization limited to this project, or is  
3 that a general way that you do business?

4 A. General way.

5 Q. Now, with respect to the annuity provider, when the bond  
6 transaction actually went forward, who was the annuity provider  
7 who was actually the annuity provider for the transaction?

8 A. Wealth Assurance Private Placement.

9 Q. And was that different than what had been initially  
10 represented?

11 A. Yes.

12 Q. What if anything did Yanni Galanis tell you about the  
13 relationship between Wealth Assurance AG that had been  
14 initially mentioned and Wealth Assurance -- did you call it  
15 Private Placement?

16 A. Yes.

17 Q. What did Yanni tell you about the relationship between the  
18 two?

19 A. That it was a subsidiary of the company.

20 Q. Wealth Assurance Private Placement was a subsidiary of  
21 Wealth Assurance AG or the other way around?

22 A. Yes, it was a subsidiary of Wealth Assurance AG that  
23 handled like high net worth policies.

24 Q. Approximately when was the transaction completed?

25 A. In August 2014.

I6B7GAL5

Raines - Direct

1 Q. Did the money from the bonds, that first two million or so,  
2 become available?

3 A. Yes.

4 Q. Did plans move forward to build the warehouse?

5 A. Yes.

6 Q. Who was responsible for running the actual project of  
7 building the physical warehouse?

8 A. Steven Haynes was the project planner, and myself as the  
9 project manager.

10 Q. And how was Haynes compensated for his work as project  
11 manager?

12 A. He received transaction fees from the initial fund raise.

13 Q. And what about you?

14 A. And I received a percentage of Steven Haynes.

15 Q. Did there come a time when Yanni Galanis proposed another  
16 bond issuance?

17 A. Yes.

18 Q. Approximately when was that?

19 A. It was soon after the first one.

20 Q. And how soon?

21 A. Well, there was -- it was immediately.

22 Q. What, if anything, did Yanni Galanis say about why he was  
23 proposing another bond issuance so shortly after the first one?

24 A. There was investors that didn't make the initial bond  
25 closure, and were interested in the social responsible capital

I6B7GAL5

Raines - Direct

1 bond structure, and they would be interested in working --  
2 investing in another bond right away.

3 MS. MERMELSTEIN: Your Honor, I think this raises the  
4 issue we discussed at sidebar.

5 THE COURT: Now?

6 MR. SCHWARTZ: Please.

7 THE COURT: So, members of the jury, I will instruct  
8 you on the law at length at the close of evidence, but I want  
9 to instruct you now on the liability of individuals, the acts  
10 of statements of the alleged coconspirators.

11 If you find that a defendant is a member of the  
12 conspiracy charged in the indictment, only reasonably  
13 foreseeable acts done or statements made in furtherance of the  
14 conspiracy by a person found by you to have been a member of  
15 the same conspiracy may be considered against that defendant.

16 In other words, this evidence may only be considered  
17 against Mr. Archer and/or Mr. Cooney if you find that they were  
18 members of the same conspiracy, these acts were taken in  
19 furtherance of the conspiracy, and these acts were reasonably  
20 foreseeable to them.

21 MS. MERMELSTEIN: Thank you, your Honor.

22 MR. SCHWARTZ: Thank you.

23 Q. Did you propose any changes to the structure or to the  
24 entities to be involved with respect to the second bond  
25 issuance?

I6B7GAL5

Raines - Direct

1 A. Yes.

2 Q. Who did you suggest that to?

3 A. To Yanni.

4 Q. And what did you suggest?

5 A. That we could shop around for another annuity provider;  
6 maybe they would offer a competitive rate.

7 Q. How did he respond?

8 A. He said there is no reason to change, you know, a good  
9 thing, the relationship that's existing the way the structure  
10 is.

11 Q. Let me direct your attention now to Government Exhibit 253  
12 just for the witness, the court and the parties, please. Do  
13 you recognize this?

14 A. Yes.

15 Q. Is that an e-mail from your e-mail account?

16 A. Yes.

17 MS. MERMELSTEIN: Your Honor, the government offers  
18 Government Exhibit 253.

19 THE COURT: Any objection?

20 MR. SCHWARTZ: No objection.

21 THE COURT: It will be admitted.

22 (Government Exhibit 253 received in evidence)

23 Q. If we could publish that to the jury and pull up the  
24 attachment, please.

25 What is that?

I6B7GAL5

Raines - Direct

1 A. That is the total site plan to what we call the town center  
2 in the community.

3 Q. And what is the town center?

4 A. So, on the left-hand side off the page where those trees  
5 are on the left of the basketball court would be the  
6 distribution center that was originally planned, and the  
7 distribution center was for private enterprise or commercial  
8 development to generate a profit. This here was an expanded  
9 version of the town center that was for civic use.

10 And essentially the profits from the for-profit  
11 business would fund and operate -- this one here for just  
12 community use, you can see there is a day care, playground.  
13 There was also a tutoring center there, the bingo hall, a  
14 laundry. There was a diabetes center that we were going to put  
15 in there, a health center, and a coffee shop.

16 Q. And the town center project, that was to be funded by the  
17 second issuance of bonds?

18 A. Yes.

19 Q. Following the bond issuances in 2014, did you continue to  
20 have discussions that other possible projects with Yanni  
21 Galanis?

22 A. Yes.

23 Q. And in general terms what were some of those projects?

24 A. One of them was propane distribution. Propane is the most  
25 used form of energy for heating and cooking in the Northern

I6B7GAL5

Raines - Direct

1 Great Plains for both North and South Dakota tribes, and there  
2 was not a tribal-owned propane distribution business, as well  
3 as it was pretty underperforming, the existing one, so there  
4 was a real opportunity there, as well as brush firefighting  
5 where tribal brush firefighters would be dispatched throughout  
6 the Greater Plains and all the way to California to fight fires  
7 as a municipal fire fighting department, which would also earn  
8 profit as well.

9 Q. Did Yanni Galanis ever successfully bring financing to any  
10 of those projects?

11 A. No.

12 Q. Has the Wakpamni Lake Community Corporation continued to  
13 pursue those projects?

14 A. Yes.

15 Q. Now, have you ever met someone named Derrick Galanis?

16 A. Yes.

17 Q. Who is that?

18 A. Yanni's son.

19 Q. And in what context did you meet him?

20 A. I met him at a dinner at one of the business meetings.

21 Q. Was he involved in the issuance of the bonds?

22 A. No.

23 Q. Did he have any involvement with the Wakpamni Lake  
24 Community itself?

25 A. Yes.

I6B7GAL5

Raines - Direct

1 Q. In what way?

2 A. He was a mixed martial arts instructor and had experience  
3 with training both youth and adults in the martial arts and the  
4 instruction of it, and he had developed a program that helped  
5 our kids and kind of instilled in them values in discipline,  
6 and he arranged for us to come and attend a mixed martial arts  
7 camp in Las Vegas and attend a live event.

8 Q. Who paid for the trip for children who were members of the  
9 Wakpamni Lake Community -- excuse me -- children of members of  
10 the Wakpamni Lake Community to attend the camp and see the  
11 mixed martial arts performance?

12 A. Yanni.

13 Q. I want to turn your attention to 2015. Did there come a  
14 time that another round of bonds was suggested?

15 A. Yes.

16 Q. Who suggested it?

17 A. Yanni.

18 Q. And did the community agree to issue additional bonds?

19 A. Yes.

20 Q. Did that bond issuance in fact go forward?

21 A. Yes, it did.

22 Q. Did there come a time that payments to the community --  
23 annual payments to the community from the bonds did not arrive?

24 A. Yes.

25 Q. Approximately when was that?

I6B7GAL5

Raines - Direct

1 A. That was one year from the anniversary date from the  
2 initial bond, when we were expected to receive the first  
3 distribution.

4 Q. So that's the fall of 2015?

5 A. Yes.

6 Q. What happened when the money didn't arrive?

7 A. A number of things happened. We made some e-mails, phone  
8 calls, inquiries to the U.S. Banking trustee as well as  
9 ultimately to Wealth Assurance, just requesting distribution,  
10 and we got like sent back -- we had to make a more formal  
11 request, or wait for a policy anniversary date. It seemed  
12 pretty routine at the time until it didn't.

13 Q. Let me show just to the witness, the court and the parties,  
14 please, Government Exhibit 282.

15 Do you recognize that e-mail?

16 A. Yes.

17 Q. Is that an e-mail that you received?

18 A. Yes.

19 MS. MERMELSTEIN: The government offers Government  
20 Exhibit 282.

21 THE COURT: Any objection?

22 MR. TOUGER: No.

23 MS. NOTARI: No objection.

24 THE COURT: It will be admitted.

25 (Government Exhibit 282 received in evidence)

I6B7GAL5

Raines - Direct

1 Q. If we could publish that to the jury.

2 How, who is sending this e-mail?

3 A. This was from Hugh Dunkerley.

4 Q. And who other than you is receiving it?

5 A. Our attorneys, Steven Haynes, President Lonehill and our  
6 trustee from U.S. Bank.

7 Q. If we can zoom back in, please.

8 Let me direct your attention to the paragraph that  
9 begins "The annuity contract number ..." Can you read that  
10 paragraph, please.

11 A. "The annuity contract number WAPC-2014-0010 dated August  
12 26, 2014 in the amount of \$25,250,000, was purchased with  
13 proceeds from the economic development program series of  
14 special revenue bonds issued in connection with the trust  
15 indentures dated August 25, 2014. The contract provides for  
16 annual distributions of \$1,823,600 per annum for years 1 to 9,  
17 \$25,250,000 principal plus \$500,000 to be paid at the tenth  
18 anniversary, \$350,000 in income for each of the subsequent 15  
19 years (\$5,250,000 cumulative), and a variable payment up to \$5  
20 million on the 25th anniversary. We understood these payments  
21 fund certain long-term tribal financial objectives. The trust  
22 indentures provides for annual payments of \$250,000 to WLCC, as  
23 you have indicated, within the first payment due on August 27,  
24 2016."

25 Q. Was that consistent with your understanding of the way in

I6B7GAL5

Raines - Direct

1 which the annuity payments were structured?

2 A. Yes.

3 Q. Let me ask you, did you ever meet any other members of  
4 Yanni Galanis' family?

5 A. Yes.

6 Q. Who is that?

7 A. His wife.

8 Q. And do you remember her name?

9 A. Shandra.

10 Q. Let's go down to the last paragraph of this e-mail, and let  
11 me ask you to read that paragraph.

12 A. "You indicated in your October 8th letter that Private  
13 Equity management was engaged by Wealth Assurance and that you  
14 intend to dismiss the manager. Our records indicate that  
15 WLCC -- not Wealth Assurance private client -- hired the  
16 manager and approved the investment criteria. We attach your  
17 written instruction to U.S. Bank dated August 21, 2014."

18 Q. Now, at the time that you were involved in the bonds being  
19 issued, did you have an understanding of Private Equity  
20 management's role in the bond transaction?

21 A. No.

22 Q. Did the WLCC ever communicate with anyone from Private  
23 Equity Management with respect to the investment of the annuity  
24 proceeds?

25 A. No.

I6B7GAL5

Raines - Direct

1 Q. And after receiving this e-mail indicating that the  
2 Wakpamni Lake Community Corporation had the legal relationship  
3 with Private Equity Management, did the Wakpamni Lake Community  
4 Corporation take steps to sever that relationship?

5 A. Yes.

6 Q. Since the payments ceased on the bonds, has construction of  
7 the town center ever been fully completed?

8 A. No.

9 Q. How much has been accomplished?

10 A. We put the outer shells of the buildings in that town  
11 center site plan.

12 Q. Is there a functioning warehouse distribution business?

13 A. No. And the long road and the driveway and the parking  
14 lots were never completed, so they're still prairie.

15 Q. Without the annuity, has the Wakpamni Lake Community  
16 Corporation been able to make the interest payments that it  
17 owes on the bonds?

18 A. No.

19 Q. Have any of the pension funds that bought the bonds reached  
20 out to the Wakpamni Lake Community Corporation to discuss the  
21 missing interest payments?

22 A. Yes.

23 Q. And what has the community told them about its ability to  
24 pay?

25 A. We spoke with them and said that we don't have functioning

I6B7GAL5

Raines - Cross

1 businesses in there in order to make payments.

2 Q. Does the Wakpamni Lake Community Corporation still owe  
3 these interest payments?

4 A. Yes.

5 Q. If the warehouse became operational and was successful,  
6 would that money be used to pay interest on the bonds?

7 A. Yes.

8 Q. In your view, is there a realistic possibility that the  
9 warehouse could be successful enough to pay back \$65 million?

10 MR. TOUGER: Objection, your Honor.

11 THE COURT: Overruled.

12 A. No.

13 MS. MERMELSTEIN: Nothing further, your Honor.

14 THE COURT: Cross-examination, Mr. Schwartz?

15 CROSS EXAMINATION

16 BY MR. SCHWARTZ:

17 Q. Good afternoon, ladies and gentlemen.

18 And good afternoon, Mr. Raines.

19 A. Hello.

20 Q. My name is Matthew Schwartz. I'm one of Devon Archer's  
21 lawyers. I have just a few questions for you today.

22 A. OK. OK.

23 Q. You've never met Mr. Archer, true?

24 A. True.

25 Q. And you have not communicated with him in any way, right?

I6B7GAL5

Raines - Cross

1 A. Right.

2 Q. You have heard of Mr. Archer though; is that right?

3 A. Yes.

4 Q. You were told at the time that this deal was brought to you  
5 back in 2014 and 2015 that Mr. Archer was somehow involved in  
6 Burnham Securities, right?

7 A. Yes.

8 Q. And you were also told that Mr. Archer was friends with  
9 someone named Hunter Biden; is that right?

10 MS. MERMELSTEIN: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 Q. And that Mr. Archer was business partners with Mr. Biden,  
14 right?

15 A. Yes.

16 Q. And you knew that Hunter Biden was the son of Joe Biden,  
17 right?

18 A. Yes.

19 Q. And of course you were aware that Joe Biden was the Vice  
20 President of the United States at the time.

21 A. Yes.

22 Q. And you would agree with me, wouldn't you, that Mr. Biden's  
23 name was mentioned more than once or twice, right?

24 A. Yes.

25 Q. Fair to say that his name was thrown around. True?

I6B7GAL5

Raines - Cross

1 A. I don't know.

2 Q. Well, you met with the government a few times to prepare to  
3 testify, right?

4 A. I met with the government, yes.

5 Q. And do you recall saying that Mr. Biden's name had been  
6 quote thrown around?

7 A. I don't recall.

8 MR. SCHWARTZ: Mr. Jackson, can we show the witness,  
9 the judge and the lawyers 3529-8, and go to page 3, and can you  
10 blow up the bottom third of the page, please, for Mr. Raines.

11 Q. Just take a moment to read that bottom paragraph to  
12 yourself. The question is just whether this reminds you that  
13 you previously told the government that Mr. Biden's name was  
14 thrown around.

15 A. I read here that it shows something I said.

16 Q. I'm just asking you what you remembered. Does this help  
17 you remember that you previously said that Mr. Biden's name was  
18 thrown around when you met with the government?

19 A. No, it doesn't remind me.

20 Q. That's fine. It is fair to say though that you believed  
21 that the involvement of Mr. Archer and Mr. Biden promoted the  
22 credibility of Burnham Securities, true?

23 A. No, I don't believe so.

24 Q. Would you agree with me that Mr. Archer and Mr. Biden were  
25 both well connected and had strong names?

I6B7GAL5

Raines - Cross

1 MS. MERMELSTEIN: Objection, your Honor.

2 A. I don't know that.

3 Q. Well, let me ask you to look again at what's on the screen  
4 in front of you about six lines down. Do you recall telling  
5 the government in one of your meetings that Mr. Archer and  
6 Mr. Biden were both well connected and had strong names?

7 A. No.

8 Q. In any case, you never spoke to Mr. Archer, so it wasn't  
9 Mr. Archer telling you about himself and Mr. Biden, true?

10 A. True.

11 Q. It was other people, right?

12 A. Yes.

13 Q. One of those people was Jason Galanis, right?

14 A. No.

15 Q. Did you say no?

16 A. I have never spoken with Jason.

17 Q. Well, how about in writing, do you recall Mr. Galanis,  
18 Mr. Jason Galanis, in writing boasting about Mr. Archer and  
19 Mr. Biden's involvement with Burnham Securities?

20 A. No.

21 Q. Mr. Jackson, can we bring up for the witness, Judge Abrams  
22 and the lawyers what has been marked for identification as  
23 Defense Exhibit 1532, and can you show Mr. Raines page 5.

24 Do you see we're looking at a letter from Jason  
25 Galanis?

I6B7GAL5

Raines - Cross

1 A. Yes.

2 Q. And you see that you were one of the people that was cc'd  
3 on this letter?

4 A. Yes.

5 Q. Can we go to page 3, please, Mr. Jackson, and can you blow  
6 up the big paragraph in the middle of the page.

7 Take a moment to read that to yourself, Mr. Raines.  
8 My question is simply: Does this help you remember that Jason  
9 Galanis boasted in writing about Mr. Archer and Mr. Biden's  
10 involvement?

11 A. No.

12 Q. You would agree with me looking at this now that Mr.  
13 Galanis did in fact boast about Mr. Archer and Mr. Biden's  
14 involvement, right?

15 A. In reading this now, yes.

16 Q. Thank you. And Mr. Galanis also boasted about someone  
17 named Doug Band at Teneo Consulting. Do you recall that?

18 A. No.

19 Q. Mr. Jackson, if you could back out and just blow up the  
20 bottom paragraph of this same page.

21 Looking at that, Mr. Raines, would you agree with me  
22 that Jason Galanis also boasted in writing about the  
23 involvement of Doug Band and Teneo Consulting?

24 A. Reading this, yes.

25 Q. Thank you.

I6B7GAL5

Raines - Cross

1           You can take that down, Mr. Jackson.

2           Another person who boasted about Mr. Archer and  
3 Mr. Biden's involvement was Tim Anderson, true?

4       A. I don't recall.

5       Q. You don't recall Mr. Anderson mentioning to you that Mr.  
6 Archer and Hunter Biden were involved in this deal?

7       A. Yes, I recall that.

8       Q. You do recall that, OK, thank you.

9           And I believe you testified on direct that you had  
10 known Tim Anderson for a period of several years prior to the  
11 time that this bond idea was brought to you; is that right?

12      A. Yes.

13      Q. And you had a high level of confidence in Tim Anderson; is  
14 that right?

15      A. Yes.

16      Q. So when he told you that Mr. Archer and Hunter Biden were  
17 involved in the deal, it lent some credibility; isn't that  
18 right?

19      A. Yes.

20      Q. But again Mr. Archer never used Mr. Biden's name or his own  
21 reputation, because you never communicated with Mr. Archer in  
22 any way, shape or form, true?

23      A. True.

24           MR. SCHWARTZ: Thank you very much, Mr. Raines. I  
25 don't have any other questions.

I6B7GAL5

Raines - Cross

1 THE COURT: Any further questions?

2 MS. NOTARI: Your Honor, Mr. Hassen is going to  
3 question.

4 THE COURT: Yes, of course.

5 CROSS EXAMINATION

6 BY MR. HASSEN:

7 Q. Good afternoon.

8 Good afternoon, everybody.

9 I'm Abraham Hassen; I'm one of the lawyers  
10 representing Bevon Cooney. I just have a few questions.

11 So you're a member of the WLCC board, correct?

12 A. No.

13 Q. You're the CEO of the WLCC?

14 A. That's correct.

15 Q. And you sit on the board?

16 A. No.

17 Q. You advise the board.

18 A. Yes.

19 Q. You came to the WLCC board with significant financial  
20 experience, correct?

21 A. Yes.

22 Q. You spent several years in various financial industries  
23 prior to joining the WLCC.

24 A. Yes.

25 Q. And you acted as a liaison to the board, explaining things,

I6B7GAL5

Raines - Cross

1 helping them with -- using your financial expertise.

2 A. Yes.

3 Q. You would digest information from various other financial  
4 entities and explain it to the board because you had more  
5 experience in the industry.

6 A. Yes.

7 Q. And you were paid a salary, and in addition you got a  
8 success fee, which is akin to a commission.

9 A. A success fee, yes.

10 Q. And a success fee is if the deal goes well, you make --  
11 everyone does well?

12 A. That's correct.

13 Q. In the deal doesn't do well, you don't do so well.

14 A. Right.

15 Q. So as part of your duties as CEO you're looking for  
16 economic opportunities.

17 A. Yes.

18 Q. And as you said on your direct testimony, those are  
19 difficult to find in the WLCC community, correct?

20 A. Yes.

21 Q. So, going to 2014 at the economic development summit, you  
22 were presented with a lot of ideas, right?

23 A. Yes.

24 Q. And when you go to these conferences you get a lot of ideas  
25 from a lot of people; is that fair to say?

I6B7GAL5

Raines - Cross

1 A. Yes, it is.

2 Q. And you have been to a lot of these conferences.

3 A. Yes.

4 Q. And some of the -- you know, when you go to a conference,  
5 some ideas pan out, most don't.

6 A. Yeah, that's fair to say.

7 Q. But this idea for the sovereign debt seemed like a good  
8 one.

9 A. Yes.

10 Q. At the conference you were surrounded by people who you  
11 knew pretty well and other people who you didn't know so well.

12 A. Yeah, that's correct.

13 Q. The people you knew well were Steven Haynes?

14 A. Yes.

15 Q. Someone you worked closely with.

16 A. Yes.

17 Q. Whose opinion you trusted?

18 A. Yes.

19 Q. Someone who added credibility to their involvement in a  
20 deal.

21 A. Correct.

22 Q. Another person was Tim Anderson.

23 A. Correct.

24 Q. Someone you knew well?

25 A. Yes.

I6B7GAL5

Raines - Cross

1 Q. Someone whose opinion you trusted.

2 A. Yes.

3 Q. Someone whose professionalism and experience added  
4 credibility to the deal.

5 A. Yes.

6 Q. And he, Tim Anderson, at that time was your lawyer for the  
7 WLCC?

8 A. One of them, yes.

9 Q. So what you liked about this idea was it had some  
10 advantages over other forms of financing that you had explored.

11 A. Yes.

12 Q. Some tax advantages, some liability advantages.

13 I will rephrase it. Is it fair to say this was a new  
14 idea that you found interesting?

15 A. Yes.

16 Q. But it was just an idea.

17 A. I had heard of social responsible capital investment sector  
18 before.

19 Q. But in 2014 at the conference at that point this was just  
20 an idea.

21 A. Yes.

22 Q. And as we discussed before, most ideas don't ever happen.  
23 When you go to a conference, you get a lot of ideas and most of  
24 them don't happen.

25 A. Yes.

I6B7GAL5

Raines - Cross

1 Q. So it's fair to say that at this conference this was still  
2 a speculative plan.

3 A. Yes.

4 Q. There was a lot of ideas that needed to be worked out if it  
5 was going to happen.

6 MS. MERMELSTEIN: Objection to form, your Honor.

7 THE COURT: Sustained.

8 Please rephrase that.

9 Q. In your experience putting these kinds of deals together,  
10 any kind of financial deal, from inception to execution  
11 requires a lot of moving parts.

12 A. Yes.

13 Q. And particularly with these kinds of financing operations  
14 there is a lot of complexity involved.

15 A. Yes.

16 Q. That's why you have lawyers and people with experience in  
17 finance.

18 A. Correct.

19 Q. And you have a lot of expertise in finance and a lot of  
20 history, correct?

21 A. Not a lot.

22 Q. You have a fair amount of experience. I mean your role on  
23 the WLCC was as a financial advisor largely, right?

24 A. Project developer specifically.

25 Q. And it was because of your experience that you had that

I6B7GAL5

Raines - Cross

1 role.

2 A. No, there was a lot of reasons why I had that role.

3 Q. Fair enough. But your experience was one of those reasons.

4 A. Yes.

5 Q. But you alone could not pull off a deal like this.

6 A. No.

7 Q. There is a lot of moving parts, and you needed to get a  
8 team together to make it work.

9 A. Yes.

10 Q. You needed professionals, you needed the lawyers, you  
11 needed the firms --

12 A. Yes.

13 Q. -- that we discussed earlier. But this particular deal and  
14 the people involved gave you comfort because you knew their  
15 track record.

16 A. Yes.

17 Q. Again, Tim Anderson, Steven Haynes and others.

18 A. Yes.

19 Q. And as it began to progress, a lot more people and a lot  
20 more entities got involved.

21 A. Yes.

22 Q. And is it fair to say that those names also gave you  
23 comfort? Some of the names we mentioned before, obviously  
24 Hunter Biden was mentioned, but also Keith Henselen from U.S.  
25 Bank, Heather Thompson, these were all people that you trusted

I6B7GAL5

Raines - Cross

1 their professionalism.

2 MS. MERMELSTEIN: Objection to form.

3 THE COURT: Could you please restate that, please.

4 Q. As more entities and people got involved, they generally  
5 gave you a good impression.

6 A. Yes.

7 Q. And throughout this you describe Tim Anderson's role as the  
8 quarterback.

9 A. I don't watch sports, but I think I might have used that,  
10 yeah.

11 Q. We're all familiar with someone who is kind of a ring  
12 leader.

13 A. Yes.

14 Q. Putting things together, making it happen.

15 Were you surprised when he switched from WLCC to  
16 Burnham?

17 A. No.

18 Q. You felt comforted by that?

19 A. Yes.

20 Q. So as all these people and all these entities -- you  
21 mentioned Wealth Assurance, a major insurance company -- that  
22 gave you comfort?

23 A. Yes.

24 Q. And as the deal began to progress, you saw that this thing  
25 was becoming real.

I6B7GAL5

Raines - Cross

1 A. Yes.

2 Q. And you were excited by this new idea becoming a real  
3 thing.

4 A. Yes.

5 Q. And of all the names that came up, you weren't familiar  
6 with the name Bevon Cooney, were you?

7 A. No.

8 Q. You never really heard his name until this case started,  
9 correct?

10 A. Correct.

11 Q. And you never had any communications with him?

12 A. No.

13 Q. And you've never talked to him on the phone in any way, or  
14 e-mail or nothing, right?

15 A. No.

16 MR. HASSEN: I have

17 MR. HASSEN: No further questions.

18 THE COURT: Mr. Touger?

19 MR. TOUGER: Thank you, your Honor. Sorry, it's a  
20 long walk.

21 CROSS EXAMINATION

22 BY MR. TOUGER:

23 Q. Good afternoon, Mr. Raines.

24 A. Hello.

25 Q. My name is David Touger. I represent John Galanis who you

I6B7GAL5

Raines - Cross

1 knew as Yanni Galanis. Correct?

2 A. Yes.

3 Q. Have you ever met me before?

4 A. No.

5 Q. You know John real well though, right?

6 A. Yes.

7 Q. And you developed a very good relationship with him, right?

8 A. Yes.

9 Q. And have you ever talked to me before on the telephone?

10 A. No.

11 Q. Have you ever exchanged any e-mails with me?

12 A. No.

13 Q. And would I be correct in saying though that you have  
14 talked to members sitting at the prosecution table before?

15 A. Yes.

16 Q. On many occasions.

17 A. A few.

18 Q. Well, you were interviewed personally by them, correct?

19 A. Yes.

20 Q. And they asked you a lot of questions, right?

21 A. Yes.

22 Q. And those interviews didn't just take five or ten minutes;  
23 some of them lasted over an hour, right?

24 A. Correct.

25 Q. How long did the longest one last, approximately? I know

I6B7GAL5

Raines - Cross

1 you didn't sit there with your watch, but -- well, you probably  
2 did toward the end, but...

3 A. Let's see, maybe two and a half hours.

4 Q. And would I be correct in saying that the shortest one was  
5 also about an hour?

6 A. That's correct.

7 Q. So you talked to them for many hours, right?

8 A. Yes.

9 Q. You went over a lot of questions and a lot of answers.

10 A. Yes.

11 Q. Now, I want to take you back to the beginning of 2014. OK?

12 A. OK.

13 Q. Would I be correct in saying that at that point in time you  
14 were trying to get some TED bonds for the Oglala tribe?

15 Correct?

16 A. The Oglala Sioux Tribe, yes.

17 Q. And I believe the total amount was about \$217 million?

18 A. Yes.

19 Q. And what is a TED bond?

20 A. It stands for Tribal Economic Development bond.

21 Q. And could you just give the jury some background of what  
22 they are.

23 A. Sure. It's one of many examples of a federal program put  
24 together to assist Native American tribes in creating finance  
25 mechanisms for their economic development.

I6B7GAL5

Raines - Cross

1 Q. And you were involved in trying to get I believe you said  
2 \$217 million of those, correct?

3 A. Yes, I was asked by the Tribal President to help put that  
4 program together, explore it.

5 Q. But one of the problems with TED bonds is they're very  
6 narrow in their scope, right?

7 A. Yes.

8 Q. And it would have been hard for you to connect all your  
9 ideas that you wanted to do and use TED bonds to finance those  
10 ideas, correct?

11 A. Yes.

12 Q. Now, plus the TED bonds were going through the Oglala  
13 counsel, correct?

14 A. Through the President's office, yes.

15 Q. Of Oglala.

16 A. Of the Oglala.

17 Q. Which is the whole tribe in general, correct?

18 A. Yes.

19 Q. They're like the Oglala would be the federal government,  
20 and the Wakpamni Lake Community would be a city inside the  
21 United States.

22 A. That's correct.

23 Q. And so the Oglala Council would have certain control over  
24 those bonds, right?

25 A. Let's see. No, they were -- they were going to establish a

I6B7GAL5

Raines - Cross

1 special office to deal with the economic development of that  
2 project.

3 Q. Through their auspices though, through the Oglala Council  
4 as opposed to the Wakpamni Lake Community.

5 A. Yes.

6 Q. And you were not a member of the Oglala Council, right?

7 A. No.

8 Q. And I believe you said this on direct, but I just want to  
9 make sure I'm correct that the WLCC is separate and distinct  
10 from the Oglala Tribal Council or the Oglala economic  
11 development team.

12 A. Yes.

13 Q. And the WLCC, the Wakpamni Lake Community Corporation,  
14 right --

15 A. Yes.

16 Q. -- is a corporation created by the Wakpamni Lake Community  
17 for its own specific economic development, right?

18 A. That's correct.

19 Q. And so the TED bonds were not going to be used through the  
20 WLCC, right?

21 A. Correct.

22 Q. And so you were looking for ideas that were specific for  
23 the WLCC to finance certain deals, right?

24 A. Yes.

25 Q. Now, let me just talk a little bit about Steven Haynes.

I6B7GAL5

Raines - Cross

1 A. OK.

2 Q. You know him very well obviously.

3 A. Yes.

4 Q. And he is one of your business partners.

5 A. Yes.

6 Q. For how long has he been a business partner?

7 A. Let's see. I want to say maybe four and a half years,  
8 somewhere in there.

9 Q. And you've done many different ideas with him, business  
10 projects?

11 A. Yeah. I mean he is unique in that he is a non-Native and  
12 has been working in Indian country economic development since  
13 19 --

14 Q. Could you just repeat it.

15 A. Yes. I'm saying he is unique as a non-Native working in  
16 Indian country since 1997. You know, he has a really strong  
17 track record in multiple industries working with specifically  
18 with Indian country, yeah.

19 Q. You anticipated my next question. He's not a Native  
20 American, right?

21 A. Right.

22 Q. We're on the same wave length here. But he is more than  
23 just a business partner; he is also a mentor to you, right?

24 A. Yes.

25 Q. And he is somebody that you have grown to respect and

I6B7GAL5

Raines - Cross

1 really treasure his involvement in your work.

2 A. Yes.

3 Q. And he has a stellar reputation in the community that you  
4 live in, correct?

5 A. Yes.

6 Q. And would you agree with me that you considered him a Wall  
7 Street hard charger type of guy?

8 A. Yes, definitely.

9 Q. By the way, do you know who Pete Shannon is?

10 A. Yes.

11 Q. Have you ever met Pete Shannon?

12 A. Yes.

13 Q. And how are Pete Shannon and Steven Haynes related?

14 A. Let's see. I don't think they -- I know they know each  
15 other.

16 Q. Not familial relationship. Business-wise.

17 A. Right. They know each other. I don't know what deals they  
18 have done together, but I --

19 Q. But they definitely knew each other.

20 A. They definitely knew each other.

21 Q. And communicated about deals, correct?

22 A. Yes.

23 Q. And Pete Shannon had a liquor company, correct?

24 A. I think he had a distribution company.

25 Q. A distribution company, right?

I6B7GAL5

Raines - Cross

1 A. Yes.

2 Q. Called SSH?

3 A. That's right.

4 MR. TOUGER: May I approach the witness, your Honor?

5 THE COURT: Yes.

6 MS. MERMELSTEIN: Mr. Touger, what are you showing  
7 him?

8 Q. Mr. Raines, have you ever seen this pamphlet? You can look  
9 at it?

10 A. Let me take a look at it. I think I did, yes.

11 Q. And it's just a promotional?

12 A. I know Andrew. I don't know --

13 Q. It's just a promotional pamphlet for the SSH company,  
14 right?

15 A. Yes.

16 Q. And it just says they're an alcohol distribution company.

17 A. Yes.

18 Q. Now, would you agree with me that you knew that the  
19 distribution company had its main warehouse in San Diego,  
20 California?

21 A. I believe so.

22 Q. And would you also agree with me that Pete Shannon through  
23 Mr. Haynes was looking for a way to partner with a Native  
24 American tribe to distribute this alcohol?

25 A. Yes.

I6B7GAL5

Raines - Cross

1 Q. And that was one of the ideas that you were talking about  
2 at the convention that you went to, correct?

3 A. Yes, they serve alcohol at most tribal casinos, so  
4 therefore if there was a tribal owned alcohol distribution  
5 company, they could probably, you know, have good relationships  
6 for alcohol distribution.

7 Q. And there would be certain tax advantages to it being a  
8 Native American company also, correct?

9 A. I believe so.

10 Q. And certain distribution obviously advantages because there  
11 are a lot of Native American casinos that serve lots of  
12 alcohol, right?

13 A. I believe so.

14 Q. Now, would you agree with me that at some point during your  
15 attendance to this convention -- I believe you said it was in  
16 March of 2014?

17 A. I think so.

18 Q. And at some point you got a call from Steven Haynes saying  
19 he wanted to meet with you, right?

20 A. Yes.

21 Q. And did he tell you that one of the things he wanted to  
22 discuss at this meeting was this alcohol distribution business  
23 of Mr. Shannon's?

24 MS. MERMELSTEIN: Objection.

25 THE COURT: Sustained.

I6B7GAL5

Raines - Cross

1 MR. TOUGER: Your Honor, may we approach?

2 THE COURT: Sure.

3 (At the sidebar)

4 MR. TOUGER: That's the last question. It's just  
5 setting up the whole idea that that's why John Galanis gets  
6 invited to this meeting is to discuss this idea.

7 MS. MERMELSTEIN: I mean he can just say -- I don't  
8 think that that establishes what Mr. Touger thinks it  
9 establishes.

10 MR. TOUGER: That was the next question.

11 MS. MERMELSTEIN: It calls for hearsay.

12 THE COURT: I think it calls for hearsay.

13 MS. MERMELSTEIN: Can I raise one issue? Mr. Touger  
14 just showed the witness a document which has never been  
15 provided to anyone, and if it's just for impeachment, obviously  
16 no one had to give it to us before right now. But if we  
17 haven't gotten already, you have to give us a copy when you  
18 show it to the witness. It's just not fair. And if there are  
19 more of those coming, I'd like to --

20 MR. TOUGER: There is nothing more coming.

21 THE COURT: And you're done with that anyway.

22 MS. MERMELSTEIN: No, I meant more generally about  
23 documents.

24 THE COURT: No, I agree.

25 (Continued on next page)

I6B7GAL5

Raines - Cross

1 (In open court)

2 THE COURT: We're waiting for a juror.

3 BY MR. TOUGER:

4 Q. So Mr. Haynes calls you and tells you I want to meet with  
5 you, right?

6 A. Yes.

7 Q. And where did this meeting take place?

8 A. In Las Vegas at the conference.

9 (Continued on next page)

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I6B5gal6

Raines - cross

1 BY MR. TOUGER:

2 Q. Do you remember what hotel it was?

3 A. The conference was at the Mandalay Bay. I believe that  
4 meeting was at the Four Seasons.

5 Q. And when you got to the meeting Mr. Haynes was there,  
6 correct?

7 A. Yes.

8 Q. And was there also the person named Mr. Henning there?

9 A. Yes.

10 Q. And do you know Mr. Henning?

11 A. Yes.

12 Q. And what is Mr. Henning's role?

13 A. He is Pete Shannon's business partner.

14 Q. Excuse me?

15 A. Pete Shannon's business partner.

16 Q. Isn't it a fact that he ran the warehouse in San Diego?

17 A. I believe so.

18 Q. And at that meeting was you, Steven Haynes, Mr. Henning and  
19 other individuals, correct?

20 A. Yes.

21 Q. And one of the individuals they introduced you to was  
22 Mr. Galanis?

23 A. Yes.

24 Q. And at that meeting, in the beginning Steven Haynes was  
25 doing most of the talking, correct?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And he was describing this whole idea of trying to involve  
3 the SSH company into a Native American company and alcohol  
4 distribution?

5 A. I believe so.

6 Q. And there was also some talk of a winery deal also?

7 A. Yes. There was several deals including like an indoor  
8 farm -- indoor vegetable farm and a few other things.

9 Q. And the winery deal happened concerning having a Native  
10 American tribe, in Northern California, start a winery, and  
11 that would add to the distribution of the alcohol distribution  
12 business, right?

13 A. That's correct.

14 Q. And John Henning -- his first name is John, right?

15 A. I believe so.

16 Q. And he was acting more as a moderator of the meeting,  
17 right?

18 A. I don't recall that, no.

19 Q. And, by the way, it was Mr. Henning that introduced you to  
20 John Galanis, right?

21 A. I don't recall that either.

22 Q. Well, from what you could tell at the meeting did  
23 Mr. Haynes have any relationship with Mr. Galanis prior to the  
24 meeting?

25 A. I believe they may have met before, but I'm not certain.

I6B5gal6

Raines - cross

1 Q. But Mr. Galanis has obviously introduced you, right?

2 A. Yes.

3 Q. And I would be correct in saying that this is the first  
4 time you ever met John Galanis?

5 A. Correct.

6 Q. First time you ever heard his name?

7 A. Correct.

8 Q. And he obviously didn't ask you to come to the meeting?

9 A. Correct.

10 Q. And the way he was introduced to you was this is somebody  
11 that Pete Shannon and Mr. Henning wanted you to hear from?

12 A. Not specifically.

13 Q. Well, how was he introduced to you?

14 A. That he had an economic -- he had socially responsible  
15 capital investors interested in developing projects that would  
16 meet the narrow scope of socially responsible capital bond  
17 investment.

18 Q. Right.

19 And at that meeting TED bonds were also discussed,  
20 right?

21 A. Yes.

22 Q. And government resource bonds were discussed, right?

23 A. I don't recall those ones specifically, but.

24 Q. Well, there were other ideas --

25 A. Other ideas, yes.

I6B5gal6

Raines - cross

1 Q. -- a lot of financing ideas were discussed at that  
2 meeting?

3 A. Correct.

4 Q. And they were all bandying about the advantages and  
5 disadvantages of each of the different ideas?

6 A. Yes. That was definitely the point of the whole  
7 conference.

8 Q. And Mr. Haynes was concentrating, though, on the fact that  
9 the Native Americans, if they ran the company, they would have  
10 sovereign immunity and would have tax advantages in that  
11 aspect?

12 MS. MERMELSTEIN: Objection.

13 THE COURT: Sustained.

14 MR. TOUGER: Sorry. I didn't hear you.

15 THE COURT: I said it was sustained.

16 BY MR. TOUGER:

17 Q. It was definitely discussed that there would be advantages  
18 for the Native American tribes to own the alcohol distribution  
19 business? Or partner with it?

20 A. Yeah, that's fair to say.

21 The original wine company was owned by a tribe at the  
22 time.

23 Q. Right.

24 A. Yeah.

25 Q. And they wanted to try to bring in this SSH business as a

I6B5gal6

Raines - cross

1 partnership in that business, right?

2 A. To grow or distribute, yes.

3 Q. And I would be correct in saying that nothing was hard-fast  
4 decided at that meeting?

5 A. Correct.

6 Q. And, but John did mention, Mr. Galanis did mention that he  
7 had a son who had influence over at Burnham, right?

8 A. I believe so. It might have been at that first meeting.

9 Q. And he said specifically that his son had worked on special  
10 projects for Burnham, right?

11 A. I think so.

12 Q. Now, and he also mentioned the name of Jason Sugarman?

13 A. I don't recall that name.

14 Q. And at this meeting you were more of a listener than a  
15 speaker; would that be correct?

16 A. Yes.

17 Q. You were just taking in all the different information that  
18 was coming out?

19 A. Yes.

20 Q. And it was at this meeting, and remember all of these  
21 questions have to do just with this meeting, there was no  
22 discussion of annuities at this meeting, right? The annuity  
23 idea didn't come to it until much later?

24 A. I think I recall hearing an annuity.

25 Q. And do you recall that there was no mention of Burnham

I6B5gal6

Raines - cross

1 Securities at this meeting either, correct?

2 A. I think I recall that name.

3 Q. I would like you to look at -- by the way, one of the  
4 interviews that you had with the government was on January 26,  
5 2016, correct?

6 A. I don't remember the exact date but I remember it was at  
7 the beginning of the year, yes.

8 Q. Could you just read this first part and the yellow part?  
9 You can read the whole paragraph if you would like but those  
10 specific parts --

11 A. There was no mention --

12 Q. No. To yourself.

13 THE COURT: Read it to yourself.

14 A. Oh.

15 Q. Finished?

16 A. Yes.

17 Q. Does that refresh your recollection that on January 26,  
18 2016, you told the members of the prosecution that you were  
19 talking to that there was no mention of Burnham Securities and  
20 the idea of investing the tribal proceeds into an annuity came  
21 much later in the project discussions?

22 A. No, that doesn't refresh my recollection.

23 Q. Now, and part of this deal that was being discussed was to  
24 build, in the Wakpamni Lake Community, a warehouse to  
25 distribute the alcohol, correct?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And that was the main interest to you, right? Because that  
3 was going to bring economic development to the Wakpamni Lake  
4 Community?

5 A. Yes.

6 Q. And, how long would you say this meeting lasted?

7 A. A lunch meeting, lunch was served; maybe an hour.

8 Q. At some point you and Mr. Haynes have to leave because you  
9 have other appointments, right?

10 A. Yes. The conference continued on.

11 Q. And the meeting starts to break up and would you agree with  
12 me that at that point you took Mr. Galanis over to the bar and  
13 introduced him to Mr. Anderson?

14 A. No.

15 Q. What happened?

16 A. What happened when?

17 Q. How did Mr. Anderson join the meeting?

18 A. He works with Steven Haynes.

19 Q. I understand that.

20 Was he at the meeting from the very beginning or did  
21 he join later on?

22 A. I believe he was there from the very beginning.

23 Q. He was. Okay.

24 And would I be correct in saying that once the meeting  
25 broke up, that was the last time you saw John Galanis up until

I6B5gal6

Raines - cross

1 the first bond series was actually signed in August of that  
2 year?

3 A. No. I had seen him during project development.

4 Q. You did see him during the spring and summer of 2014?

5 A. I believe so, yes.

6 Q. About how many times did you see him?

7 A. Maybe four.

8 Q. Okay. In Las Vegas or in other places?

9 A. Las Vegas.

10 Q. Okay.

11 Now, would I be correct in saying that from what you  
12 could tell, Mr. Anderson was also intrigued by what John  
13 Galanis had said?

14 MS. MERMELSTEIN: Objection.

15 MR. TOUGER: He was at the meeting, your Honor.

16 THE COURT: Sustained. I sustained the objection.

17 MR. TOUGER: Okay.

18 Q. Would I be correct in saying that you received, from  
19 Mr. Anderson, a memorandum that he issued on April 4, 2014?

20 A. I don't recall that.

21 Q. You do or you don't?

22 A. I don't.

23 Q. You don't.

24 Now, but would you agree with me, though, that once  
25 the meeting ended, as time went on the idea started to blossom?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And discussions started to take place about putting this  
3 idea into actual effect?

4 A. Correct.

5 Q. And it gained a certain amount of momentum?

6 A. Yes.

7 Q. And would you also agree with me that you relied on Steven  
8 Haynes and Tim Anderson to do most of the heavy lifting in  
9 moving this idea forward?

10 A. Yes.

11 Q. And that they were the main communicators with people on  
12 the other side of this deal?

13 A. Yes.

14 Q. That you were leaving it up to them?

15 A. Yes.

16 Q. And at this point you didn't know Mr. John Galanis very  
17 well, right?

18 A. Right.

19 Q. But you trusted him because, of course, Steven Haynes had a  
20 certain amount of trust in him, right?

21 MS. MERMELSTEIN: Objection.

22 THE COURT: Sustained.

23 Q. Did you trust him at that point?

24 A. I trusted Steven Haynes and his business background, yes.

25 Q. Yes.

I6B5gal6

Raines - cross

1           And, you trusted that he had done his due diligence on  
2 the people he introduced you to?

3           MS. MERMELSTEIN: Objection.

4           THE COURT: If you can rephrase that?

5 Q. You relied on Mr. Haynes to do the due diligence on John  
6 Galanis?

7           MS. MERMELSTEIN: Your Honor, may we approach?

8           THE COURT: Sure.

9           (Continued next page)

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I6B5gal6

Raines - cross

1 (At side bar)

2 MS. MERMELSTEIN: Due diligence on John Galanis  
3 includes some very bad things that are very easily found on the  
4 Internet. This is a line of questioning that risks an answer  
5 that I can't stop from coming out because people did it.

6 MR. TOUGER: Okay.

7 THE COURT: I hear you.

8 MS. MERMELSTEIN: We don't mind it coming in --

9 MR. TOUGER: Okay. I will move on.

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Raines - cross

(In open court)

BY MR. TOUGER:

Q. Now, would I be correct in saying, and this is all during this time period of the spring and summer of 2014, okay, that's the time period we are discussing?

A. Okay.

Q. That during that time period you never worked alone with John Galanis, there were always other people involved; lawyers, insurance companies and other people of that nature?

MS. MERMELSTEIN: Objection.

THE COURT: Why don't you break it down.

Q. Well, there were lawyers involved in this?

A. Yes.

Q. Right? Everybody had a lawyer representing them?

A. Yes.

Q. And Tim Anderson started, in the beginning of the process, was more of your representative than he was until he switched over to the Burnham side, right?

A. Yes.

Q. And you trusted Tim Anderson with representing you, right?

A. Yes.

Q. No reason to distrust him?

MS. MERMELSTEIN: Objection.

THE COURT: Sustained.

Q. By the way, what other deals had you worked with Tim

I6B5gal6

Raines - cross

1 Anderson on?

2 A. Let's see.

3 MS. MERMELSTEIN: Objection to relevance, your Honor.

4 THE COURT: I think that's right. Why don't we move  
5 on from that.

6 BY MR. TOUGER:

7 Q. Well, were they finance deals?

8 I think it is relevant if it is not what area they're  
9 in, your Honor.

10 THE COURT: Just very briefly.

11 MR. TOUGER: Yes.

12 Q. Were they finance deals?

13 A. No. We were working on class 2 gaming which is like a  
14 bingo hall.

15 Q. Now --

16 A. That's Steven Haynes' area of expertise as well.

17 Q. Casinos, right?

18 A. Class 2, specifically.

19 Q. And Mr. Anderson worked for a very large firm, right?

20 A. Yes.

21 Q. Dilworth Paxson. Familiar to you?

22 A. Yes.

23 Q. And he had been your attorney, I think you said, for about  
24 two years?

25 A. Correct.

I6B5gal6

Raines - cross

1 Q. And you continued to use him so obviously there was no real  
2 dissatisfaction with his work?

3 MS. MERMELSTEIN: Objection.

4 THE COURT: I will allow that. But then move on.

5 MR. TOUGER: I am.

6 THE COURT: You can answer that.

7 THE WITNESS: Yes.

8 BY MR. TOUGER:

9 Q. By the way, was Mr. Haynes paid, besides the construction  
10 fees that he got, was he paid a fee for his involvement, what  
11 they call the success fees that you said?

12 A. I don't believe so.

13 Q. He didn't get any money at the end of closing that you  
14 split with him?

15 A. That's the only one that I'm aware of.

16 Q. Right; and how much was that for?

17 MS. MERMELSTEIN: If he can specify which transaction,  
18 your Honor?

19 Q. The first bond series Mr. Haynes was issued a success fee,  
20 correct?

21 A. Yes.

22 Q. In quotes. You call it a success fee, right?

23 A. Yes.

24 MS. MERMELSTEIN: Objection to the "in quotes," your  
25 Honor.

I6B5gal6

Raines - cross

1 Q. Well, it is also known as a commission, right?

2 A. Transaction fee.

3 Q. Many different titles for the same thing.

4 And how much was that for?

5 A. It's in that schedule of payments. I don't remember the  
6 exact number.

7 Q. It was tens of thousands of dollars, right?

8 A. Yes.

9 Q. And you split that with him, right?

10 A. I got a percentage of it, yes.

11 Q. And, by the way, you were shown on direct a drawing of the  
12 Wakpamni Town Center. Do you remember that?

13 A. Yes.

14 Q. And, would I be correct in saying that Steven Haynes' wife  
15 was the architect who drew that drawing?

16 A. Yes.

17 Q. And was she paid for her work?

18 A. I believe so.

19 Q. And, you got paid your success fee through Mr. Haynes'  
20 company?

21 A. Yes.

22 Q. And would I be correct in saying that, in total, not just  
23 for the first bond series but in total, you received  
24 approximately \$108,000 in success fees?

25 A. No. I think it was 88.

I6B5gal6

Raines - cross

1 Q. You were also interviewed by the government on October  
2 17th, 2017, right?

3 A. I believe so. I don't remember the exact date.

4 Q. But sometime in that time period, right?

5 A. Yes.

6 Q. And, again, you can read whatever you would like but I want  
7 to point you to the last sentence here.

8 A. I recognize that number but I think it was lower when I --  
9 when it ultimately got paid out.

10 Q. So, this doesn't refresh your recollection that on October  
11 17th you told the government you were paid approximately  
12 \$108,000 in the form of two payments?

13 A. Correct.

14 Q. And the funds you were paid, either the 88 or the 108 or  
15 somewhere in between, you got directly from the bond proceeds?

16 A. It was the transaction success fee, yes.

17 Q. Which came from the bond proceeds?

18 A. Yes.

19 Q. So, the money was paid to Haynes' company, went from the  
20 WLCC to Haynes' company and then to you?

21 A. Yes.

22 Q. And as you stated on direct, you thought that Mr. Galanis,  
23 John Galanis, would receive a similar success fee from Burnham?

24 A. I thought so.

25 Q. By the way, you never got any money from John Galanis for

I6B5gal6

Raines - cross

1 doing this deal, right?

2 A. Correct.

3 Q. He never tried to bribe you?

4 A. No.

5 Q. Never tried to force you?

6 A. No.

7 Q. And you never got any money from Burnham Securities?

8 A. No.

9 Q. And you never got any money from a company named Thorsdale?

10 A. No.

11 Q. The only money you got from this deal is through Steven  
12 Haynes' company?

13 A. Correct.

14 Q. And just like you said on direct, the WLCC Board knew all  
15 about the payments you were getting from Mr. Haynes' company?

16 A. Yes.

17 Q. Nothing -- everything was above board on that, correct?

18 A. Yes.

19 Q. Because it is common for people, like yourselves and others  
20 who work only deals, to get success fees when the deal works?

21 MS. MERMELSTEIN: Objection.

22 Q. As far as you knew?

23 THE COURT: You can answer based on your general  
24 understanding.

25 A. Yes.

I6B5gal6

Raines - cross

1 Q. Matter of fact, I believe you testified that your total  
2 payments from the WLCC, in general, all come on success fees.  
3 You are not paid a salary by the WLCC?

4 A. Correct.

5 Q. By the way, are you still working with Mr. Haynes on other  
6 projects?

7 MS. MERMELSTEIN: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MR. TOUGER:

10 Q. Did you keep any notes of your meetings with Mr. Galanis at  
11 the time you were meeting with him or shortly thereafterwards?

12 A. No.

13 Q. You didn't keep a notebook?

14 A. I had a notebook. I didn't keep it.

15 Q. Right. But at the time you were taking notes?

16 A. Yes.

17 Q. But you don't know what happened to that notebook at this  
18 time?

19 A. Correct.

20 Q. You never gave the government copies of those notes either,  
21 right?

22 MS. MERMELSTEIN: Objection.

23 THE COURT: Overruled.

24 A. No.

25 Q. Now, at some point Anderson decides -- Mr. Anderson decides

I6B5gal6

Raines - cross

1 that he is going to go and represent Burnham in the deal,  
2 right?

3 MS. MERMELSTEIN: Objection to Mr. Anderson deciding.

4 THE COURT: Sorry?

5 MS. MERMELSTEIN: I said objection to the question  
6 about Mr. Anderson's decision-making.

7 BY MS. MERMELSTEIN:

8 Q. I didn't ask him about -- Mr. Burnham went and represented  
9 Burnham Securities, correct?

10 Mr. Anderson went and represented Burnham Securities?

11 A. Correct.

12 Q. And I believe, on direct, you stated the reasons why?

13 A. Yes.

14 Q. Could you go over that again that you answered on direct?

15 MS. MERMELSTEIN: Objection to counsel's tone, your  
16 Honor.

17 THE COURT: Just ask a question.

18 MR. TOUGER: She is objecting. I asks the same  
19 question she asks.

20 THE COURT: I know, but if it has been asked and  
21 answered already why go into it again.

22 MR. TOUGER: I want to go into a little bit more  
23 detail more than she did. That's what cross-examination is  
24 about.

25 THE COURT: I understand, but just ask a different

I6B5gal6

Raines - cross

1 question.

2 BY MR. TOUGER:

3 Q. What were the reasons Mr. Anderson gave you for going to  
4 represent Burnham?

5 A. That Burnham needed Native American law familiarity  
6 representation and that it would speed up the deal if they  
7 didn't have such a long learning curve.

8 Q. So Mr. Anderson said it would be beneficial to all parties  
9 if he went and represented Burnham?

10 A. Yes.

11 Q. And you had no trouble with that decision whatsoever?

12 A. Correct.

13 Q. Because you had other lawyers you could use, right?

14 A. Correct.

15 Q. And you thought it would be advantageous to the WLCC to  
16 have Mr. Anderson representing Burnham for the reasons you just  
17 stated?

18 A. Yes.

19 Q. And I would think that you felt also that even though he  
20 was representing Burnham, he would still not do anything to  
21 harm the WLCC?

22 MS. MERMELSTEIN: Objection.

23 THE COURT: Sustained.

24 Q. Now, you ended up being represented by Greenberg Traurig,  
25 correct?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And Greenberg Traurig is another large law firm, right?

3 A. Correct.

4 Q. With vast -- representing native Americans in the United  
5 States?

6 A. Yes.

7 Q. And I believe your then girlfriend, now wife -- by the way,  
8 congratulations -- worked for Greenberg Traurig?

9 A. Yes.

10 Q. And they would bill the WLCC directly for their work?

11 A. Yes.

12 Q. Do you know how much, in total, Greenberg Traurig received  
13 for the representation of the WLCC in this case in these bonds?

14 A. I know it is in the scheduled payout. I don't recall the  
15 exact number.

16 Q. And, again, it would be in the hundreds of thousands of  
17 dollars though, correct?

18 A. I believe so.

19 Q. Now, getting back to the plan itself, the plan, as you  
20 understood it, as you were described it by your lawyers and  
21 others involved, was to fund, purchase, and grow companies to  
22 generate an income for the WLCC?

23 MS. MERMELSTEIN: Objection to form.

24 THE COURT: Sustained. Why don't you rephrase that.

25 MR. TOUGER: I am having a hard time hearing you, your

I6B5gal6

Raines - cross

1 Honor. I'm sorry.

2 THE COURT: I said sustained. Why don't you rephrase  
3 it or break it down.

4 MR. TOUGER: Sure.

5 BY MR. TOUGER:

6 Q. You had an understanding of what the deal was supposed to  
7 do, right?

8 A. Yes.

9 Q. And one of the things that the deal was supposed to do, as  
10 you understood it, was that they were going to take the funds  
11 from the bonds to purchase and grow other companies, right?

12 A. No. It was supposed to fund the annuity specifically.

13 Q. Right, and the annuity was to invest in private equity,  
14 right?

15 A. That part I'm not clear on.

16 Q. But the idea was to generate income for the WLCC?

17 A. That's correct.

18 Q. Again, I would like you to read a part of your interview on  
19 October 17th 2017 and see if that refreshes your recollection  
20 that you told the government back then that the plan was to  
21 fund, purchase, and grow companies to generate an income for  
22 the WLCC. Again, you can read whatever you want but I point  
23 you to that part.

24 Does that refresh your recollection?

25 A. Yes.

I6B5gal6

Raines - cross

1 Q. So, did you understand that that was what the plan was  
2 supposed to do, correct?

3 A. I still understood that it was to purchase an annuity.

4 Q. Now, you liked the idea, right?

5 A. Yes.

6 Q. You thought it was a good, safe, well thought-out plan?

7 A. Yes.

8 Q. And you also thought that if it didn't work, the WLCC and  
9 the Wakpamni Community wouldn't be on the hook for anything,  
10 right?

11 MS. MERMELSTEIN: Objection.

12 Q. Those are your exact words, as a matter of fact?

13 MS. MERMELSTEIN: Objection to the commentary.

14 A. I don't recall.

15 THE COURT: Sustained. Just ask one question at a  
16 time.

17 Q. You stated on direct that these were non-recourse bonds,  
18 right?

19 A. Yes.

20 Q. And non-recourse bonds means you can't be held responsible  
21 for them, right?

22 A. I believe so.

23 Q. And again, the October 17th statement, just read the last  
24 sentence?

25 A. That was how it was presented to me.

I6B5gal6

Raines - cross

1 Q. Right. It was presented to you by your lawyers and other  
2 representatives that it was a good, safe, well thought-out plan  
3 and the community would not be on the hook if it did not work  
4 out?

5 MS. MERMELSTEIN: Objection.

6 THE COURT: I am going to overrule this one but why  
7 don't we take a break now. Okay? Don't discuss the case, keep  
8 an open mind, we will take our afternoon break.

9 Thank you.

10 (Continued on next page)

I6B5gal6

Raines - cross

1 (Jury not present)

2 THE COURT: If you can step down and come back in a  
3 few minutes? Thank you.

4 (Witness steps down)

5 THE COURT: Do we have to talk about anything now?  
6 Okay. See you in a few minutes.

7 (Recess)

8 MR. SCHWARTZ: Just so your Honor is aware, after this  
9 witness, I think it is the government's intention to call a  
10 document reader and there are a few issues that need to be  
11 resolved in advance of that.

12 THE COURT: Okay. Do you want to just start to raise  
13 them while we are waiting for the jury and stop as they come  
14 closer.

15 MR. SCHWARTZ: Sure do you want us to do it from here?

16 THE COURT: Yes.

17 MR. SCHWARTZ: The government has listed maybe 40  
18 exhibits that they intend to read. I only have problems with  
19 three of them. One of them is that Exhibit 2117, which has  
20 been the subject of letter writing, and that's the e-mail where  
21 every communication is from Mark Waddington and it is  
22 principally hearsay, and hearsay within hearsay objection, but  
23 also a 403 objection in light of the advice of counsel issues.

24 There is also an exhibit which the government just  
25 added to its list this morning. There are three exhibits that

I6B5gal6

Raines - cross

1 the government has marked, all of them since Friday, on the  
2 subject of an entity called Archer Diversified TCG.

3 THE COURT: I'm sorry. On the subject of?

4 MR. SCHWARTZ: An entity called Archer Diversified  
5 TCG.

6 THE COURT: We will talk about it later. Thank you.

7 (Continued on next page)

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I6B5gal6

Raines - cross

1 (Jury present)

2 THE COURT: Everyone may be seated.

3 You may proceed.

4 MR. TOUGER: Thank you, your Honor.

5 BY MR. TOUGER:

6 Q. We were talking about the non-recourse bonds, correct?

7 A. Yes.

8 Q. And would I be correct in saying also that when the  
9 resolution was passed by the Wakpamni Lake Community  
10 Corporation to adopt these bonds, right?

11 A. Yes.

12 Q. And would I be correct in saying that in that resolution it  
13 actually says that the revenue bonds shall never constitute the  
14 debt or indebtedness of the Wakpamni Lake Community and shall  
15 not give rise to the financial obligation of the Wakpamni Lake  
16 Community or charged against its general credit or taxing  
17 power?

18 A. Yes.

19 Q. And would I be correct in that it further states that there  
20 will be no personal liability for the directors of the WLCC nor  
21 any person executing the bonds also, correct?

22 A. Yes.

23 Q. You had no personal exposure either, right?

24 A. Correct.

25 Q. Now, who wrote that resolution?

I6B5gal6

Raines - cross

1 A. I believe our attorneys.

2 Q. Excuse me?

3 A. Our attorneys.

4 Q. Greenberg Traurig?

5 A. I believe so.

6 Q. And would I be also correct in saying that once the whole  
7 idea got accepted and was moving forward, that you became much  
8 more focused on the WLCC side of the deal including the  
9 logistics of building the building and the business of the  
10 deal, correct?

11 A. Yes.

12 Q. And once that first bond was executed in August of 2014,  
13 people were really just celebrating the idea that this actually  
14 happened, right?

15 A. Yes.

16 Q. And nobody was really concerned about what was going on  
17 because they were more happy about that the bonds were  
18 executed?

19 MS. MERMELSTEIN: Objection.

20 THE COURT: Sustained.

21 BY MR. TOUGER:

22 Q. Now, in total, from the bonds, if I can talk to you about  
23 with all three series of the bonds you got \$2.25 million when  
24 the first bond series was signed to do the construction of the  
25 warehouse, correct?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And that went to, as I said, the construction of the  
3 warehouse?

4 A. Correct.

5 Q. It was done by Steven Haynes' company, right?

6 A. There was a construction, architecture and --

7 Q. The construction part was done by Steven Haynes' company,  
8 right?

9 A. No.

10 Q. It wasn't?

11 A. No. There was a local tribal construction company.

12 Q. And did Steven Haynes have anything to do with the  
13 construction of the building?

14 A. Yeah. He had a hand in the design for the architecture and  
15 just the overall planning of it.

16 Q. He was like a general contractor on it?

17 A. Yeah. Exactly.

18 Q. He made money on it, right? He didn't do it for free?

19 A. Correct.

20 Q. And did you make any commissions or success fees from  
21 Steven Haynes for that money that he got?

22 A. No.

23 Q. And would I also be correct in saying that in August of  
24 2015 the WLCC got \$1.83 million?

25 A. I believe so.

I6B5gal6

Raines - cross

1 Q. And in September of 2015 the WLCC got \$1.37 million?

2 A. Yes.

3 Q. And they also got approximately \$520,000 in distributions,  
4 right?

5 A. I don't think we saw any of that money.

6 Q. You didn't get the \$250,000 for the first two years?

7 A. No.

8 Q. You are sure about that?

9 A. I am pretty sure.

10 Q. Okay.

11 Let's even put that money aside. Taking that money  
12 out, the WLCC got approximately \$5 million from this bond deal?

13 A. No.

14 Q. If you add up 2.25 and 1.83 and 1.37 you get to about  
15 \$5 million, right?

16 A. The other two numbers you mentioned, the 1.8 and 1.3, we  
17 didn't see those. We didn't get that.

18 Q. Where did it go?

19 A. I'm not sure. I'm not sure where all of this went,  
20 actually.

21 Q. Didn't you tell the government that you got \$1.83 million  
22 in August of 2015 from Wealth Assurance? When I say you I  
23 meant the WLCC.

24 A. Would have been U.S. Bank, the trustee.

25 Q. They actually sent you the funds, right?

I6B5gal6

Raines - cross

1 A. I'm not sure. We got \$2 million. That's what we built the  
2 shells with of the buildings.

3 Q. Now, in the bond deal, that building that you built was the  
4 first commercial building built on the Pine Ridge Reservation  
5 in almost 30 years, right?

6 A. Maybe 20 years.

7 Q. Okay. Long time?

8 A. Yeah.

9 Q. And it was a spectacular event for the Wakpamni, correct?

10 A. Correct.

11 Q. And everybody was really happy about that?

12 MS. MERMELSTEIN: Objection, your Honor.

13 THE COURT: Sustained.

14 BY MR. TOUGER:

15 Q. You had a ground breaking ceremony; is that correct?

16 A. That's correct.

17 Q. In November?

18 A. Yes.

19 Q. And a lot of Wakpamni came out for the ground breaking  
20 ceremony?

21 A. Yes.

22 Q. Vast majority of them?

23 A. Yes.

24 Q. And Mr. Anderson came out for the ground breaking ceremony,  
25 right?

I6B5gal6

Raines - cross

1 A. Yes.

2 Q. And it was really cold out that day, right?

3 A. Sure was.

4 Q. Not weather you want to be out in, correct?

5 A. Exactly.

6 Q. But everybody came out because of the ground breaking  
7 ceremony, right?

8 MS. MERMELSTEIN: Objection.

9 THE COURT: Sustained.

10 Q. And that building didn't cost the WLCC a penny though,  
11 right? All the money came from the bond deal?

12 A. Correct.

13 Q. And I want to talk to you about who approached you for the  
14 second series of bonds. Okay?

15 Can we agree that you don't remember exactly who came  
16 to you first with that idea?

17 A. Yes.

18 Q. That at some point you definitely have conversations with  
19 Mr. John Galanis about it but you don't know who first broached  
20 the idea to you?

21 A. Correct.

22 Q. And would I also be correct in saying that after August of  
23 2014, your relationship with John Galanis continued to grow,  
24 right?

25 A. Yes. I believe it was John that introduced the second

I6B5gal6

Raines - cross

1 bond, though.

2 Q. You have no distinct memory of that, right?

3 A. Correct.

4 Q. And going back to where we were, after all of 2014 your  
5 relationship with John Galanis continued to grow, correct?

6 A. Yes.

7 Q. And you saw him many more times, right?

8 A. Yes.

9 Q. Even met members of his family, right?

10 A. Yes.

11 Q. And you went out to visit him in San Diego, right?

12 A. Yes.

13 Q. And you discussed many business projects together, right?

14 A. Correct.

15 Q. And would I be correct in saying that the business -- most  
16 of the business projects you discussed were business projects  
17 that you were bringing to him?

18 A. Yes.

19 Q. And, but Mr. Galanis brought to you, and Derrick brought to  
20 you together the martial arts, right?

21 A. Yes.

22 Q. Matter of fact you said Mr. Galanis actually paid for that  
23 to happen, right?

24 A. Yes.

25 Q. Would I also be correct in saying that these discussions

I6B5gal6

Raines - cross

1 about business deals with Mr. Galanis continued to happen after  
2 the last series of bonds were executed?

3 A. Yes.

4 Q. And these were very congenial business discussions, right?  
5 These are discussions among friends, right?

6 A. We presented business plans on the propane and the wildfire  
7 fighting.

8 Q. And you were not suspicious of John Galanis during this  
9 period, right?

10 MS. MERMELSTEIN: Objection.

11 THE COURT: I will allow that.

12 Go ahead. You can answer that.

13 THE WITNESS: No.

14 BY MR. TOUGER:

15 Q. Now, would I be correct in saying that prior to August of  
16 2014 the WLCC was making approximately \$50,000 to \$150,000 per  
17 year?

18 MS. MERMELSTEIN: Objection to relevance, your Honor.

19 MR. TOUGER: Once we get to the next question it will  
20 become fairly obvious.

21 THE COURT: I will allow it.

22 THE WITNESS: Can you repeat the question?

23 BY MR. TOUGER:

24 Q. Sure.

25 Prior to the bond execution in August of 2014 the WLCC

I6B5gal6

Raines - cross

1 was making approximately \$50,000 to \$150,000 a year?

2 A. Probably less than that.

3 Q. And last year, though, the WLCC made close to \$200,000 to  
4 \$250,000, right?

5 MS. MERMELSTEIN: Objection, your Honor. May we  
6 approach?

7 THE COURT: Yes.

8 (Continued next page)

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I6B5gal6

Raines - cross

1 (At side bar)

2 MS. MERMELSTEIN: I object to this whole line of  
3 questioning. First, the principal source of money that the  
4 WLCC is making is from lending so I think we have to tread  
5 carefully there.

6 THE COURT: Is what?

7 MS. MERMELSTEIN: From the lending, so we have to  
8 tread carefully. But, most significantly, it is completely  
9 irrelevant and the only purpose of doing this is to suggest  
10 that somehow this community has not in fact been harmed by the  
11 conduct of the defendants. That's not a proper argument. The  
12 fact that they have other sources of income, if they have  
13 somehow mulled it together to make things work is not a  
14 reasonable basis for cross-examination and the whole line of  
15 questioning is inappropriate and should be precluded.

16 THE COURT: Yes.

17 MR. TOUGER: I'm glad that the government understands  
18 what I'm doing. That's not what I'm doing it for at all, your  
19 Honor.

20 The idea here is that the -- he has testified to the  
21 poverty of the Wakpamni and I am just bringing out that the  
22 WLCC is making money and -- some money.

23 THE COURT: Why is that relevant?

24 MR. TOUGER: And that the next thing is that he is  
25 making half of what the WLCC makes, he makes. And so, I am

I6B5gal6

Raines - cross

1 bringing that out and moving on.

2 THE COURT: You still haven't told me the relevance of  
3 how much money he is making.

4 MR. TOUGER: Because it is not -- it is what he is  
5 making off the WLCC, I think that is highly relevant when  
6 they're going to stand up on summation and say they took  
7 advantage of these poor Native Americans. He is taking half of  
8 what the WLCC is making as his own income.

9 MS. MERMELSTEIN: That's inappropriate too. The  
10 suggestion that someone's disclosed fee should be held against  
11 them is, I think, improper. It suggests somehow he is not  
12 behaving properly, which is false. It's his --

13 MR. TOUGER: I'm not suggesting that he is behaving  
14 improperly at all.

15 MS. MERMELSTEIN: It is intended to besmirch the  
16 witness as why he is taking a big fee. Nobody would work if  
17 they couldn't make a living doing it, so to suggest that his  
18 disclosed fee should be held against him or otherwise be  
19 subject of cross-examination is inappropriate.

20 MR. TOUGER: Right, I'm not saying --

21 MS. MERMELSTEIN: There is no proper purpose. What is  
22 the relevance?

23 MR. TOUGER: It not to be held against him, it is it  
24 show that people -- exactly what you said. People work for the  
25 Native American financing to make money, and if he is making

I6B5gal6

Raines - cross

1 money and there is a lot of other people trying to make money  
2 also --

3 MS. MERMELSTEIN: He has already said that he got a  
4 fee on this deal. That's fine.

5 THE COURT: I don't think any of this is relevant.

6 MR. TOUGER: Okay.

I6B5gal6

Raines - cross

1 (In open court)

2 THE COURT: I will strike the last two questions and  
3 one answer.

4 (Continued next page)

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I6B5gal6

Raines - cross

1 (At side bar)

2 MR. TOUGER: Just so we save ourselves a trip.

3 THE COURT: Okay.

4 MR. TOUGER: I'm not going to mention payday loans,  
5 not going to do any of the complaints against him, I am not  
6 going to do that at all but online lending is the reason that  
7 WLCC gets founded and that's all I'm going to bring out.

8 MS. MERMELSTEIN: It has been precluded by the Court's  
9 order.

10 THE COURT: You can focus on lending you, don't have  
11 to focus on online lending.

12 MR. TOUGER: Lending.

13 THE COURT: Yes, generally. That's what the ruling  
14 said.

15 MR. TOUGER: The problem is, your Honor, is that the  
16 reason the WLCC is formed and he will say this, I mean it is in  
17 his own affidavit, is because they didn't want -- the Wakpamni  
18 district did not want to get involved in online lending.

19 That's the only thing I'm going to bring out.

20 THE COURT: What difference does it make what kind of  
21 lending it is?

22 MR. TOUGER: If he will recognize when I say lending  
23 that that's what I'm talking about.

24 MS. MERMELSTEIN: He will, but wait a minute. The  
25 fact that -- why the WLCC was formed or what the Oglala tribal

I6B5gal6

Raines - cross

1 government thought about the involvement of lending is also  
2 completely irrelevant.

3 If Mr. Touger wants to ask him about misstatements  
4 that he made in connection with lending, whatever the proffered  
5 basis has been to the Court, then fine, but none of this is  
6 proper and we have been trying to litigate this since the  
7 beginning.

8 MR. TOUGER: The only thing I am trying to bring out  
9 is that the WLCC Wakpamni Lake district, it has nothing do with  
10 the Wakpamni District, it only worked for the Wakpamni Lake  
11 Community, and the only way to bring that out is to show why  
12 the WLCC was created. I don't know how else to do it. That's  
13 the reason. The reason it was created is because when he went  
14 to the Oglala Economic Council and said we have this deal from  
15 Cash Crowd, it is going to pay us X amount of dollars, do you  
16 want to do it? The Wakpamni District originally said yes and  
17 when the deal was negotiated, they refused to sign the document  
18 and that is when the WLCC was formed. And the only reason I am  
19 bringing this out is to show, again, that this WLCC has nothing  
20 do with Oglala, has nothing to do with the Wakpamni District.  
21 It is solely and only unique to Wakpamni Lake Community. That  
22 is an important piece of evidence. If you want to tell me how  
23 to do that and that is the only thing, is that the Wakpamni  
24 District's refusal to honor the contract. If you want me to  
25 say "lending" and he will say yes to that, that's fine, but I

I6B5gal6

Raines - cross

1 have no problem, I will say -- if they want to take a break and  
2 have him instructed that there was an issue with a finance deal  
3 that they brought, that's fine also. But the point is that's  
4 why the WLCC was founded and I have a right to bring that out.

5 MS. MERMELSTEIN: No, you don't.

6 We have elicited on direct, it could not be more clear  
7 in the record that the Wakpamni Lake Community Corporation is  
8 an economic development entity solely for the benefit of the  
9 Wakpamni Lake Community. It is crystal clear. I will sign a  
10 stipulation that says that.

11 We also did this on direct. If you want to say to him  
12 I want to be super crystal clear about something, the Wakpamni  
13 Lake Corporation is solely for the benefit of the Wakpamni Lake  
14 Community, that's fine.

15 MR. TOUGER: And funds go directly to the Wakpamni  
16 Lake Community and the Oglala and get no money.

17 MS. MERMELSTEIN: Sure. That's fine. You can ask him  
18 those questions but there is no need to get into what you are  
19 asking him. Why don't you ask him those questions?

20 MR. TOUGER: They were coming.

21 THE COURT: Well, it sounds like we are all in  
22 agreement then.

23 MS. MERMELSTEIN: Thank you, your Honor.

24 (Continued next page)  
25

I6B7GAL7

Raines - Cross

1 BY MR. TOUGER:

2 Q. Let's just talk a little bit about the WLCC, OK?

3 A. OK.

4 Q. As we've already discussed, the Oglala Tribal Council is  
5 like the federal government, correct?

6 A. The Oglala, yes.

7 Q. And the Wakpamni District is like a state?

8 A. Correct.

9 Q. And the Wakpamni Lake Community is like a city in a state.

10 A. Yes.

11 Q. And they're all three separate distinct governmental  
12 entities.

13 A. Correct.

14 Q. And they all have separate and distinct economic  
15 development councils.

16 A. Yes.

17 Q. And would I be correct in saying that the Wakpamni Lake  
18 Community Corporation only has to do with the Wakpamni Lake  
19 Community?

20 A. Correct.

21 Q. It has no association with the Wakpamni District?

22 A. Correct.

23 Q. And no association with the Oglala Economic Council.

24 A. True.

25 Q. And all profits, if any, of the WLCC go to the Wakpamni

I6B7GAL7

Raines - Cross

1 Lake Community and not to the Wakpamni District or the Oglala.

2 A. Correct.

3 Q. And that is accepted by the Oglala?

4 A. Yes.

5 Q. That is accepted by the Wakpamni District.

6 A. Yes.

7 Q. There is no dispute about that.

8 A. No, there is an Ordinance 1217 that clearly lays that out  
9 in Article 6 in the Tribal Constitution.

10 Q. And also no doubt that the Wakpamni Lake Community had the  
11 right to form the Wakpamni Lake Community Corporation.

12 A. Correct.

13 Q. That was done under Oglala law, right?

14 A. Yes.

15 Q. And it's registered in -- well, where is it registered?

16 A. With the Tribe's UCC code.

17 Q. Which is separate and distinct from being registered for  
18 instance, a company registering in the United States, right?

19 A. Correct.

20 Q. It's registered as a Native American corporation.

21 A. Correct.

22 Q. And being a Native American corporation has certain  
23 advantages, right? Like you discussed on direct there are  
24 government contracts that go to Native American tribes and  
25 things like that?

I6B7GAL7

Raines - Cross

1 A. Yes, it has advantages and disadvantages.

2 Q. Right, everything has advantages and disadvantages. And it  
3 has certain tax advantages, right?

4 A. Yes.

5 Q. And it has sovereign immunity because it's under the  
6 auspices of the Wakpamni Lake Community.

7 A. Yes.

8 Q. And one of the reasons you founded -- when I say you, I  
9 mean the Wakpamni Lake Community -- founded the Wakpamni Lake  
10 Community Corporation is because the Wakpamni Lake Community  
11 didn't feel it was getting enough attention from the Oglala  
12 Economic Council.

13 MS. MERMELSTEIN: Objection.

14 THE COURT: Sustained.

15 Q. Was it the opinion of the Wakpamni Council -- Wakpamni Lake  
16 Community Council -- that they weren't getting enough funds  
17 from the Oglala Economic Development Council?

18 MS. MERMELSTEIN: Objection.

19 THE COURT: Sustained.

20 Q. By the way, in the end you were not allowed to bring the  
21 alcohol onto the Pine Ridge Reservation, correct?

22 MS. MERMELSTEIN: Objection to relevance, your Honor.

23 THE COURT: Sustained.

24 MR. TOUGER: Your Honor, may I approach?

25 THE COURT: Sure.

I6B7GAL7

Raines - Cross

1 (At the sidebar)

2 THE COURT: Tell me the relevance of this.

3 MR. TOUGER: As you heard, the reason that this  
4 warehouse was built was to be a distribution center for  
5 alcohol. That's the reason it was built. In the end the  
6 Oglala have a rule that no alcohol can be brought onto the  
7 reservation, and that is why that idea failed; it failed  
8 because they can't bring alcohol onto the reservation. That  
9 two questions. I don't see how that's not relevant.

10 MS. MERMELSTEIN: Same objection. It's not. First of  
11 all, it's not true that the sole idea for the warehouse was for  
12 alcohol. There were other import/export ideas with respect to  
13 the warehouse, including for example, solar panels that have  
14 tax benefits. But I think the more important is this: What  
15 Mr. Touger is trying to do is suggest that it's not that the  
16 bond didn't work out; it that the business idea didn't work  
17 out. And that's not true. The warehouse never got -

18 THE COURT: Just one at a time. Finish what you were  
19 saying.

20 MS. MERMELSTEIN: Thank you, your Honor. So, there is  
21 no relevance to the fact that one particular business idea  
22 didn't work out. That's sort of irrelevant here.

23 What is relevant here is the representations that were  
24 made concerning the bonds and what happened with the bonds.  
25 The warehouse, the construction never was completed because the

I6B7GAL7

Raines - Cross

1 money ran out. The construction was never fully completed  
2 because the money ran out. If the business ideas that were  
3 going to come in didn't work out, it's not relevant, and I  
4 think they suggest something that's not true.

5 MR. TOUGER: Your Honor, how could it not be relevant  
6 that one of the men who negotiated this deal with the WLCC  
7 didn't know that he wasn't going to be allowed to bring alcohol  
8 onto the reservation? That was part of the negotiation.

9 It's relevant to show how these negotiations proceeded  
10 and what operations -- the ideas everybody was working under.

11 One of the main ideas that he's testified goes to have  
12 the SSH company come in and use it as a distribution center for  
13 Indian-owned casinos and distribute alcohol through them. And  
14 they were not allowed to do that by the Oglala.

15 And I'm not saying that's the only reason the bond  
16 deal didn't work; I'm not saying that's the reason they didn't  
17 get the bond money. Obviously, they didn't get the bond money  
18 because somebody stole \$65 million, that's obvious. It would  
19 be ridiculous for me to argue that the reason everything went  
20 bad is not because 65 million is missing.

21 THE COURT: I will let you ask the two questions.

22 And you can follow up on redirect.

23 MS. MERMELSTEIN: Thank you, your Honor.

24 (Continued on next page)

25

I6B7GAL7

Raines - Cross

1 (In open court)

2 BY MR. TOUGER:

3 Q. Mr. Raines, is it true that the Oglala have a rule that you  
4 can't bring alcohol onto the reservation?

5 A. Yes.

6 Q. And so you could not use the warehouse for one of its  
7 reasons, it was going to be used as an alcohol distribution  
8 center?

9 A. To clarify, they had just passed a memorandum that allowed  
10 alcohol in, and then we also had an exception because we were  
11 not opening the alcohol or selling it not only in the  
12 reservation but within the State of South Dakota.

13 Q. So you could then do it.

14 A. Yes.

15 Q. And the resolution that just passed was recent or --

16 A. No, it was at that time.

17 Q. At that time. OK. Now, when you went to Las Vegas, you  
18 went there with an idea to bring -- to try to find programs  
19 that would bring economic development to the Wakpamni Lake  
20 Community. That was one of your reasons for going.

21 A. That's correct.

22 Q. And to increase employment on the reservation?

23 A. Yes, WLCC has four areas of focus, which is to create new  
24 income, create new employment, new infrastructure and new  
25 services for the community.

I6B7GAL7

Raines - Cross

1 Q. And the idea -- as far as you were concerned, with this  
2 idea that hit fruition when the bonds were first executed in  
3 August of 2014, was that this project building the warehouse  
4 would bring employment?

5 A. Yes.

6 Q. Would bring funds?

7 A. Yes.

8 Q. And would bring a distribution center to the Wakpamni Lake  
9 Community.

10 A. Correct.

11 Q. So all of those things that you went to Las Vegas in order  
12 to find were actually happening when that first series of bonds  
13 were signed.

14 A. Yes.

15 MR. TOUGER: Nothing further, your Honor.

16 THE COURT: Any redirect?

17 MS. MERMELSTEIN: Yes. Thank you, your Honor.

18 MR. TOUGER: Oh, I do have one other.

19 BY MR. TOUGER:

20 Q. You were -- you are aware that in November of 2015 a mutual  
21 release was signed, correct? If you're not, I can show it to  
22 you.

23 A. Can you show it to me, please.

24 Q. You can peruse this document and tell me if you recognize  
25 it.

I6B7GAL7

Raines - Cross

1 A. Yes.

2 Q. And?

3 A. That was at the very end.

4 Q. Right. And on the last signature page is Geneva Lonehill's  
5 signature, correct?

6 A. Yes.

7 Q. Now my question to you is: Did you sign that for her or  
8 did she sign that document, if you remember?

9 A. Well, that's an electronic version, so I would have done  
10 it.

11 Q. You would have signed that document?

12 A. Yes.

13 Q. And would I be correct to say that you read the document  
14 before she signed it?

15 A. Yes.

16 Q. Before you signed it, I should say.

17 A. Yes.

18 Q. And would I be correct in saying that paragraph G -- your  
19 Honor, I would move this into evidence.

20 MS. MERMELSTEIN: Your Honor, we haven't had an  
21 opportunity to review it. Mr. Touger didn't mark it or provide  
22 it, so we would like an opportunity to take a look.

23 THE COURT: OK.

24 MR. TOUGER: This was read during Anderson's testimony  
25 actually.

I6B7GAL7

Raines - Cross

1 Q. Well, maybe we can speed things up if I just ask simply:

2 In November of 2015 when you read this document, would you

3 agree with me that the WLCC -- and you being the one who signed

4 on their behalf -- were happy with the way the investments were

5 going in the bond deals?

6 A. I think at that time there we had realized that something

7 was wrong, and that was our attorneys recommended that that

8 formal letter go out to cease and desist all activities so that

9 we could assess where the funds were.

10 Q. Isn't it true that in the document itself the issuer --

11 that's the WLCC, right? You issued the bonds, right?

12 A. Yes.

13 Q. Represented that you had reviewed the portfolio holdings of

14 a separate account and determined that it is consistent with

15 the investment guidelines as set forth in the governing

16 investment management agreement between Private Equity and

17 owner, and specifically investments were made in Private Equity

18 with a concentration in financial services and that the current

19 market value of the securities, holdings for the contract, are

20 in excess of the issuer's -- WLCC's obligations to the owner

21 set forth?

22 THE COURT: You know what, since it's not in evidence,  
23 why don't we not read it.

24 Do you need another minute, Ms. Mermelstein, to look

25 at it?

I6B7GAL7

Raines - Cross

1 MS. MERMELSTEIN: Yes, your Honor. I'm sorry. It's  
2 just that it's a long document, so we have to be able to review  
3 it. I expect we won't have any objection, but we have to have  
4 a chance to look at it.

5 MR. TOUGER: This paragraph itself was brought out on  
6 Mr. Anderson's --

7 THE COURT: On direct or cross?

8 MS. MERMELSTEIN: I don't recall that, your Honor,  
9 although I may not be perfectly remembering the transcript.

10 THE COURT: So just before you read it, why don't  
11 you -- why don't we just wait a minute. Do you want to look it  
12 over now?

13 MS. MERMELSTEIN: That's fine.

14 THE COURT: Unless you have a shorter question in  
15 which you don't have to read from the document not yet in  
16 evidence, I'm amenable to that as well.

17 Q. When you signed this -- and if you didn't, that's fine --  
18 had you reviewed the investments?

19 A. No.

20 Q. But your lawyers said for you to sign this document anyway.

21 A. Yes.

22 MR. TOUGER: Nothing further, your Honor.

23 THE COURT: All right.

24

25

I6B7GAL7

Raines - Redirect

1 REDIRECT EXAMINATION

2 BY MS. MERMELSTEIN:

3 Q. Can I ask you to please pull up Government Exhibit 282 in  
4 evidence, and can you go to the page that is WLCC4 at the  
5 bottom. Can we put up side by side with the first page of this  
6 document.

7 just so we put ourselves back in time, on direct you  
8 were asked about this e-mail on October 15 from Hugh Dunkerley  
9 to you, and we talked about the fact that after receiving this  
10 e-mail the Wakpamni Lake Community Corporation terminated its  
11 relationship with Private Equity Management, right?

12 A. Yes.

13 Q. Let's look at the attachment. I don't know if you still  
14 have your binder in front of you.

15 MR. TOUGER: Your Honor, this document --

16 THE COURT: This is 282 in evidence. Do you have an  
17 objection?

18 MR. TOUGER: I did not go over this on cross, and John  
19 Galanis had nothing to do with this document.

20 MS. MERMELSTEIN: I don't think Mr. Touger's comments  
21 about his client's activities are appropriate, but this is in  
22 evidence and I'm about to ask questions that follow up on what  
23 Mr. Touger just said.

24 THE COURT: All right. Go ahead.

25 Q. So, I'm sorry it's hard to read, Mr. Raines. The hard copy

I6B7GAL7

Raines - Redirect

1 is much easier. But do you see attached to this e-mail was an  
2 annual statement of account for an institutional single premium  
3 variable annuity. Do you see that?

4 A. Yes.

5 Q. And if you look at this sort of line items of the  
6 transaction, you see that on September 14 -- excuse me --  
7 September 26 of 2014 there was a wire received. Do you see  
8 that?

9 A. Yes.

10 Q. And then do you see the next line is that there was an  
11 annuity purchased?

12 A. Yes.

13 Q. The purchase of an annuity was consistent with your  
14 understanding of how the bond transaction was supposed to work,  
15 right?

16 A. Correct.

17 Q. Nothing about this statement that was sent to you suggests  
18 that -- tells you anything about what if anything the annuity  
19 may have been invested in, right?

20 A. Correct.

21 Q. It doesn't say anything about the nature of those  
22 investments, right?

23 A. Yes.

24 Q. OK. Now, you were asked by Mr. Touger a number of  
25 questions in which he suggested that John Galanis had told you

I6B7GAL7

Raines - Redirect

1 that Jason Galanis had influence at Burnham or worked on  
2 special projects.

3 We can take that down, Ms. Sheinwald. Thank you.

4 Just so we're clear, John Galanis told you that Jason  
5 Galanis was a senior partner at Burnham, right?

6 A. Yes.

7 Q. And you were asked a number of questions about a statement  
8 that you previously made in an interview.

9 And if I can approach, your Honor.

10 THE COURT: Yes.

11 MR. TOUGER: Can I see what you're showing him?

12 MS. MERMELSTEIN: I will give you the Bates number.

13 Q. So I just put in front of you what has been marked for  
14 identification as 3529-8. And let me direct your attention to  
15 page 2. Do you recognize it as a document Mr. Touger showed  
16 you just a few minutes ago, right?

17 A. Yes.

18 Q. Let me ask you to read just to yourself, not out loud, the  
19 bottom paragraph there.

20 MR. TOUGER: Objection, your Honor. May we approach?

21 THE COURT: Sure.

22 (Continued on next page)

I6B7GAL7

Raines - Redirect

1 (At the sidebar)

2 MR. TOUGER: At this point, your Honor, he hasn't  
3 stated that he hasn't remembered -- doesn't remember anything.  
4 She can't be impeaching her own witness, so why are we doing  
5 this?

6 MS. MERMELSTEIN: I think that this witness was not  
7 given a fulsome opportunity to explain what he was saying in  
8 this paragraph. If you read the paragraph it is perfectly  
9 clear that he was not on any kind of notice that the annuity  
10 money was going to be used to fund other businesses, that the  
11 reference to the businesses is to Wakpamni Lake's businesses  
12 that were being grown.

13 MR. TOUGER: So ask him the question.

14 MS. MERMELSTEIN: I am going to, but I have to point  
15 him to what he was being asked about before to be able to ask a  
16 coherent question.

17 THE COURT: You can ask him about it. Don't read it,  
18 but you ask him about it to provide context.

19 MR. TOUGER: Ask about what? I just want to know what  
20 the acceptable question is.

21 THE COURT: Well, she can reference the fact that you  
22 asked questions about a certain document, and then she can  
23 follow up with her own question.

24 MR. TOUGER: Right. But she can't ask him to read the  
25 document before he has said he doesn't remember anything. Why

I6B7GAL7

Raines - Redirect

1 does he have to read the document? What's the reason he is  
2 reading that document?

3 THE COURT: It's only to provide context.

4 MR. TOUGER: So let her provide context through the  
5 question.

6 THE COURT: It's like saying you were asked questions  
7 about the January whatever meeting.

8 MR. TOUGER: There is no reason she can point him to  
9 an answer. She is pointing him to the answer. She can't do  
10 that.

11 MS. MERMELSTEIN: I'm not pointing to an answer. He  
12 was shown something and didn't fully explain it, and I would  
13 like to direct his attention to what he was shown and ask him  
14 follow-up questions.

15 THE COURT: Just direct his attention to what he was  
16 shown and not to what you want to elicit.

17 MS. MERMELSTEIN: Yes, no, this is what he was shown.

18 MR. TOUGER: No. Your Honor, I showed him one  
19 sentence.

20 THE COURT: Right, so she will reference the sentence  
21 that he was shown to provide the context.

22 MS. MERMELSTEIN: Will do.

23 MR. SCHWARTZ: I think the question has to be sort of  
24 from fresh start; it can't be didn't you tell the F.B.I.

25 MR. TOUGER: Exactly.

I6B7GAL7

Raines - Redirect

1 MR. SCHWARTZ: Because we can ask about prior  
2 inconsistent statements.

3 THE COURT: I agree with that.

4 MS. MERMELSTEIN: I'm going to allow him to explain  
5 what he was saying at this time.

6 THE COURT: Just say you were asked about, and then  
7 ask exactly what he was asked about. You can reference the one  
8 sentence, but you shouldn't be reading or having him read  
9 anymore.

10 MR. TOUGER: And he shouldn't have the document in  
11 front of him.

12 MS. MERMELSTEIN: Yes.

13 THE COURT: That's fine. Then you can take the  
14 document back.

15 MS. MERMELSTEIN: Thank you, your Honor.

16 (Continued on next page)  
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I6B7GAL7

Raines - Redirect

1 (In open court)

2 BY MS. MERMELSTEIN:

3 Q. Mr. Raines, do you remember being pointed to the sentence  
4 in that paragraph concerning the plan to fund, purchase and  
5 grow companies by Mr. Touger on cross-examination?

6 A. Yes.

7 Q. So put the document down now. The plan to purchase and  
8 grow companies that was being discussed there, to be clear, was  
9 not the annuity was going to invest in companies growth. Those  
10 were companies that the Wakpamni Lake Community Corporation was  
11 going to grow with the proceeds of the bonds, right?

12 MR. TOUGER: Objection to leading, your.

13 THE COURT: Yes. Why don't you rephrase without  
14 leading.

15 Q. Sure. In the sentence that Mr. Touger pointed you to on  
16 cross-examination about the plan to fund, purchase and grow  
17 companies, who was the entity being discussed there -- that you  
18 were discussing -- who was going to purchase, grow and fund  
19 companies from the proceeds of the bonds?

20 A. WLCC.

21 Q. Now, you were also asked some questions about nonrecourse  
22 and sort of -- recourse I guess and nonrecourse bonds. With  
23 respect to these bonds, what was your understanding of whether  
24 investors could go after the assets of the bonds themselves,  
25 that is to say, the warehouse proceeds?

I6B7GAL7

Raines - Redirect

1 A. They would be limited to the warehouse proceeds.

2 Q. You were also asked some questions about payments made to  
3 the Wakpamni Lake Community Corporation, 1.8 million something,  
4 1.3 million something. The U.S. Bank had an account in the  
5 name Wakpamni Lake Community Corporation, right?

6 A. Yes.

7 Q. And the way the structure of the bonds worked was that  
8 money would come in from the annuity to that bank account and  
9 then go out to pay whoever had bought, the bonds like the  
10 pension funds, right?

11 A. Yes.

12 Q. So the Wakpamni Lake Community Corporation itself never  
13 actually received that money to use for its own purposes. It  
14 was used for interest payments, right?

15 A. Yes.

16 Q. Now, you were also asked a number of questions about sort  
17 of deals that you brought to Yanni Galanis. Did any of those  
18 ever go anywhere, ever come to fruition with Yanni?

19 A. No.

20 Q. So am I right that the only deals that went through with  
21 him were the bond deals that he proposed?

22 A. Yes.

23 Q. And can we pull up Government Exhibit 214 in evidence,  
24 please. and can we go to the settlement statement at the end of  
25 the document. I don't think it's quite the last page. OK.

I6B7GAL7

Raines - Redirect

1 Can we zoom in on that, please.

2 You referenced I think the settlement statements a  
3 number of times on cross-examination. This is the settlement  
4 statement for the first round of bonds. You can see at the  
5 bottom that there is \$500,000 total closing statement issuance  
6 costs, right?

7 A. Yes.

8 Q. So all the people getting money from the bond issuance are  
9 listed here, right?

10 A. Yes.

11 Q. And this includes, for example, Haynes Investments, right?

12 A. Yes.

13 Q. About \$60,000, right?

14 A. Yes.

15 Q. And your fees were paid as a share of that, right?

16 A. Correct.

17 Q. Burnham Securities, Inc. got \$250,000, right?

18 A. Yes.

19 Q. And you understood that Yanni Galanis, if he received any  
20 compensation, would get a share of that, right?

21 A. Yes.

22 Q. Just so we're clear?

23 MR. TOUGER: Objection, your Honor. Move to strike.

24 THE COURT: No, overruled.

25 Q. Nowhere on this schedule B is there an indication of a

I6B7GAL7

Raines - Redirect

1 payment to Sovereign Nations Development Corp., right?

2 A. Correct.

3 Q. No indication of a payment to John Galanis, right?

4 A. Correct.

5 Q. And you were not aware that John Galanis received \$2.35  
6 million from the --

7 MR. TOUGER: Objection, your Honor.

8 THE COURT: Overruled.

9 MR. TOUGER: May we approach?

10 THE COURT: Yes.

11 (Continued on next page)

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I6B7GAL7

Raines - Redirect

1  
2 (At the sidebar)

3 MR. TOUGER: Your Honor, I objected to that first  
4 question being allowed to answer about where Burnham was going  
5 to pay him the money from. Burnham can pay money from  
6 anything. They set their own commission fee. There is no  
7 conversation with him about what the commission fee would be.  
8 That's all his guesswork.

9 So for them to say he had no idea that Burnham would  
10 be paying -- from where Burnham would be paying him -- he has  
11 no idea about that; nobody told him anything about that. He  
12 just assumed John would be getting a finder's fee because he  
13 got one. There was no comments ever made to him that John  
14 Galanis was going to get any money. So, if that is allowed  
15 into evidence --

16 THE COURT: Why can't you ask him that on recross?

17 MR. TOUGER: Because why should it even be in  
18 evidence? It's complete conjecture on his part. There is no  
19 foundation in fact whatsoever.

20 MS. MERMELSTEIN: Well, I don't agree with that.

21 MR. TOUGER: Can I ask questions like that that have  
22 no foundation in fact whatsoever? Where is the foundation in  
23 fact that that question was asked?

24 MS. MERMELSTEIN: I think there is lots of foundation  
25 in the record that the settlement statement sets forth the

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Raines - Redirect

1 closing and transaction costs. Everyone who was legitimately  
2 getting money is on there. There have been questions put to  
3 this witness about his understanding that people get paid on  
4 commission, that there is nothing wrong with that, that people  
5 who are part of transactions benefit from them.

6 He is a representative of WLCC; he was a party to this  
7 transaction; and I don't think it's in any fashion  
8 inappropriate to ask him whether or not he was aware of  
9 something that happened. He is not, obviously. That's  
10 important. You can point out that maybe Burnham agreed to give  
11 him money not from the transaction fees. If you want to ask  
12 that question, that's fine, but it's a perfectly legitimate  
13 question.

14 MR. TOUGER: Burnham could have given him 500,000, two  
15 million or \$10. He has no foundation. There was never any  
16 discussion with him that he was even going to get one. It's  
17 pure assumption on his part. And for him to be able to say  
18 that he was supposed to get it from that, where does it say he  
19 was supposed to get it from that distribution? It doesn't say  
20 anywhere.

21 And that's not even the normal course. The company  
22 gets to set what they find as a finders fee. The finders fee  
23 might be six percent of the total value of the deal, with is  
24 way beyond \$250,000. We don't know what it is, and he  
25 certainly doesn't. He has no inkling what it is. It was never

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Raines - Redirect

1 discussed with him or anything else. That you let them ask  
2 that question is --

3 THE COURT: Well, first of all, stop accusing me. You  
4 guys know more about it. So, if you want to make a motion in  
5 advance of something, you can do that.

6 MR. TOUGER: Well, I didn't even think that question  
7 would even be asked. I think it's totally improper.

8 THE COURT: Right. But in terms of like who has what  
9 basis, you guys know that, I don't. So that's the first thing.

10 Just give me one second. Let me look at the  
11 transcript.

12 THE COURT: So, what is the relevance of his  
13 understanding of the payment?

14 MS. MERMELSTEIN: Sure. Mr. Touger opened and said  
15 everyone knew John Galanis was getting this money; this was not  
16 some undisclosed payment. That's not true. At a minimum,  
17 Mr. Raines has represented that the WLCC didn't know. There  
18 has been no testimony that Mr. Anderson knew.

19 Let's be clear about something, if you want to argue  
20 to the jury that maybe Burnham decided to pay him this fee, you  
21 can do that. There is no evidence of that, and of course it's  
22 not true. That's not what any of the Burnham witnesses would  
23 say.

24 So he is claiming he was entitled to this money. He  
25 wasn't. There is a settlement statement that shows what was

I6B7GAL7

Raines - Redirect

1 going to be done with bond proceeds. And let's be clear, if  
2 Burnham wanted to pay him that money, I suppose it could have,  
3 but it didn't. The money that went to John Galanis came out of  
4 the bonds proceeds, and that was not disclosed to the people  
5 involved in the deal.

6 The government is certainly entitled to prove that he  
7 received that money and that it wasn't being disclosed and that  
8 people didn't know he was getting it. And this is the person  
9 who represents the Wakpamni Lake community.

10 MR. TOUGER: They should have asked Tim Anderson or  
11 someone from Greenberg Traurig that question. He has already  
12 said many time he just signed things because the lawyers told  
13 him to sign it. He already said he wasn't concerned with the  
14 other parts of the transaction except for the building of the  
15 building.

16 All I said on opening was that he got money. I didn't  
17 say an amount, I didn't say where it came from. I said that he  
18 got money that went to him, and that's what happened.

19 MS. MERMELSTEIN: And that everyone knew it.

20 MR. TOUGER: And he didn't assume it. And so did  
21 Anderson say the same thing. You're wrong. Anderson said the  
22 exact same thing, that he assumed that Burnham would pay him a  
23 commission, because that's what is done in financial  
24 transactions. Everybody would say that. Every expert called  
25 in here, everybody who is in private equity would say, yes, you

I6B7GAL7

Raines - Redirect

1 get a finders fee, or a commission fee, or a deal fee, whatever  
2 way you want to put it, success fee. That's what's done.

3 So the fact -- and the fact that they're now trying to  
4 bring out that John Galanis didn't get \$2.35 million.  
5 Sovereign Nations did. And who is control of Sovereign Nations  
6 has yet to be even talked about yet. But John Galanis I think  
7 got a total of \$375,000, something of that nature. I don't  
8 know the exact number. I can get it; it's written down.

9 MS. MERMELSTEIN: I can proffer to your Honor that the  
10 evidence is very strong that \$2.35 million of the bond proceeds  
11 were directly wired to an account in the name Sovereign Nations  
12 Development Corp. It was opened just before that wire was  
13 made, and that account was controlled exclusively by John  
14 Galanis. Like every one of these transactions, he had a  
15 functionary who did the actual work at his direction. That  
16 person is going to testify, and that's what they're going to  
17 say, and the evidence is going to be clear that that money went  
18 to, among other things, things that are very clearly John  
19 Galanis' personal expenses.

20 Whatever you want to say about Burnham's right to pay  
21 a fee, that money came out of the bond proceeds; it was not  
22 disclosed in the documents, and the parties were not aware of  
23 it. That's the most direct evidence that there is of John  
24 Galanis' participation in this crime, and the government has to  
25 be allowed to ask this question.

I6B7GAL7

Raines - Redirect

1 MR. TOUGER: You can ask the question of Mr. McMillan  
2 when he testifies, did John Galanis get \$375,000. Mr. McMillan  
3 will also testify that Jason Galanis entities got money and a  
4 lot of other entities got money. Mr. Murphy got money for his  
5 work on the deal. Everybody got money from that Sovereign  
6 Nations, not just John Galanis. Out of the \$2.35 million John  
7 Galanis got \$300,000 and change, I think it's 375. I believe  
8 that's the number.

9 And he has no idea about that whatsoever. So if they  
10 want to bring it out through McMillan, that's fine. If they  
11 want to bring him back, like they always say the order of the  
12 trial is the order of the trial. They decided to put this  
13 witness in their order, and he has no idea about this at all,  
14 and all his testimony is based on pure conjecture of something  
15 he knows nothing about.

16 THE COURT: Your last question was would it have  
17 mattered? Is that your last question?

18 MS. MERMELSTEIN: My question is were you aware that  
19 that was happening? Did you know? And he didn't. That's  
20 exactly the point. The one thing we agree with is that he  
21 didn't know that was happening, and that's incredibly  
22 important.

23 THE COURT: I am going to allow it.

24 MR. TOUGER: But, your Honor, wait a minute. He has  
25 already said he didn't pay attention to this part of the deal.

I6B7GAL7

Raines - Redirect

1 All he was concerned about -- he said it directly -- all he was  
2 concerned about was the building part of the bond deal. He  
3 just said he signed the addendum to the contract.

4 THE COURT: They are allowed to qualify what he did  
5 and didn't know. And if you think that they are arguing  
6 something that isn't the case, you can argue otherwise. Or you  
7 can --

8 MR. TOUGER: I understand that, your Honor, but they  
9 have already asked a question. He is giving an answer that I  
10 objected to and I am now moving to strike now that you know the  
11 background.

12 THE COURT: And I'm not going to strike it. OK.

13 MS. MERMELSTEIN: Thank you.

14 MR. SCHWARTZ: Can I just say one thing? There has  
15 been a lot of leading on this redirect.

16 THE COURT: There has been a lot of leading; that I  
17 agree with.

18 MR. SCHWARTZ: We got an answer to something this  
19 witness to something he said very clearly he didn't know the  
20 answer to on cross that with a leading question we got an  
21 answer to. I think it was the right answer, so I don't care.

22 MS. MERMELSTEIN: I will be more careful.

23 THE COURT: That I agree with.

24 (Continued on next page)

25

I6B7GAL7

Raines - Recross

1 BY MS. MERMELSTEIN:

2 Q. Mr. Raines, you weren't aware that John Galanis got \$2.35  
3 million of the bond proceeds, were you?

4 A. No.

5 MS. MERMELSTEIN: Nothing further.

6 THE COURT: Any recross?

7 Mr. Schwartz? Ms. Notari? No recross?

8 MS. NOTARI: No.

9 MR. SCHWARTZ: No.

10 THE COURT: Mr. Touger?

11 MR. TOUGER: One second.

12 Just I would ask that the government bring up  
13 Government Exhibit 217?

14 MS. MERMELSTEIN: Sure.

15 RE CROSS EXAMINATION

16 BY MR. TOUGER:

17 Q. Do you recognize this document? This is the closing  
18 statement for the third --

19 A. 2015?

20 Q. Yes.

21 A. Yes.

22 Q. Can we go to the distribution page, please. Right there.  
23 And if you can just highlight the --

24 So Haynes Investment in this bond issue got \$130,000,  
25 correct?

I6B7GAL7

Raines - Recross

1 A. Yes.

2 Q. And did you get a percentage of that \$130,000?

3 A. Yes.

4 Q. And what was your percentage of that \$130,000?

5 A. I don't know the exact percentage, but I received 88 in  
6 total.

7 Q. Of that 130 you got 88?

8 A. No, of the project.

9 Q. OK. And you already saw in the first one that they got  
10 60,000, right?

11 A. Yes.

12 Q. So that's a total of 190?

13 A. Yes.

14 Q. Plus on the second series of bonds he also got a finders  
15 fee, correct -- or success fee.

16 A. I believe so.

17 Q. And would I also be correct in saying that upon the third  
18 signing of the bond the WLCC -- upon the signing of the third  
19 series of bonds the WLCC got \$1.25 million?

20 A. I don't recall.

21 Q. You don't recall \$1.25 million?

22 A. No. We got the original \$2 million that we built the  
23 shells of the building with.

24 Q. And when you signed the addendum in November of 2016 you  
25 don't recall getting \$250,000?

I6B7GAL7

Raines - Recross

1 A. No.

2 Q. And you don't recall when you signed the addendum in  
3 November of 2015 getting \$277,000.

4 A. No.

5 Q. And, by the way, you had no discussions whatsoever about  
6 what type of service fee Mr. John Galanis would get, correct?

7 A. Correct.

8 Q. You never talked to anybody about that.

9 A. Correct.

10 Q. It's all conjecture on your part.

11 A. What do you mean?

12 Q. Well, you're just assuming that he would get one, correct?

13 A. Yes.

14 Q. But you had no idea what the amount would be, or who would  
15 pay it or what it would be.

16 A. Correct.

17 Q. Nobody ever discussed that with you.

18 A. Right.

19 Q. And would I be correct in saying that a lot of things went  
20 on in this deal that nobody ever discussed with you?

21 MS. MERMELSTEIN: Objection, your Honor.

22 Q. Well, when I finish my cross-examination, you said you  
23 signed that mutual release without really going over all the  
24 paragraphs with your lawyers, correct?

25 A. I mean I had reputable law firms.

I6B7GAL7

Raines - Recross

1 Q. There is nothing wrong with it. I'm just saying is that  
2 true?

3 A. I don't believe there was anything either.

4 Q. Right, so you did just sign things when people asked you to  
5 sign things.

6 MS. MERMELSTEIN: Objection to form, your Honor.

7 THE COURT: Why don't you rephrase that.

8 Q. Did you sign the mutual release without reading and  
9 understanding all of the words in that document?

10 A. I trusted my attorneys.

11 Q. So did you sign that document without reading and  
12 understanding and discussing all the terms of that document?

13 A. Yes.

14 Q. And that happened on other occasions in this case, correct?

15 A. Not that I recall.

16 Q. That's the only document you didn't review. You understand  
17 the intricacies of every other part of this deal.

18 MS. MERMELSTEIN: Objection, your Honor.

19 THE COURT: I will allow that.

20 Can you answer that?

21 A. I understood the concept, and I understood the attorneys  
22 were represented on both sides of the deal, and there was a lot  
23 of responsibility as well as government oversight on the  
24 structure of the project, and I --

25 Q. You trusted the system?

I6B7GAL7

Raines - Recross

1 A. I trusted the system.

2 Q. Exactly. And, as you said on cross you were really  
3 concerned -- once the deal got going and it looked like it was  
4 going to take place -- in what was going on on the Wakpamni  
5 community, building the building and getting the logistics of  
6 that done, correct?

7 A. Yes.

8 Q. That was the focus of your attention.

9 A. Yes.

10 Q. You weren't focused on what the annuity was doing, what it  
11 was investing in or how much money it was making or not making,  
12 correct?

13 A. Correct.

14 Q. You left that to the lawyers.

15 A. Yes.

16 MR. TOUGER: Nothing further, your Honor.

17 THE COURT: All right. Anything additional?

18 MS. MERMELSTEIN: No, your Honor.

19 THE COURT: You can step down. Thanks.

20 (Witness excused)

21 THE COURT: Are you reading documents now?

22 MS. TEKEEI: Yes, your Honor, we would like to publish  
23 some e-mails to the jury by reading them.

24 THE COURT: OK. Why don't we discuss the ones -- why  
25 don't you read the ones that have been stipulated to initially.

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1 MR. QUIGLEY: We're just going to table the other ones  
2 for now.

3 MS. TEKEEI: Thank you, your Honor.

4 THE COURT: I remind you that you are still sworn that  
5 you are to read as accurately as you can.

6 WITNESS: Yes, your Honor. Good afternoon.

7 MS. TEKEEI: Thank you, your Honor. May I proceed?

8 THE COURT: Yes.

9 MS. TEKEEI: Your Honor, we would like to offer into  
10 evidence the following exhibits which are on agreement by the  
11 parties:

12 Government's Exhibits 2223, 2300, 2112, 2227, 2039,  
13 2041, 2042, 2043, 2045, 2047, 2049, 2050, 2052, 2231, 3215,  
14 2053, 1272, 2232, 2233, 1226, 3216, 2234, 3217, 1236, 1273,  
15 2241, 3276, 2256, 2263, 2267, 2070, 2072, 2276, 2118, 2075,  
16 3245, 2077, 2079, 2086, 2084, 2092, 2093, 2094, 2095, 2098,  
17 2099, 2119, 3272 and 2298.

18 MR. SCHWARTZ: Hold on one second.

19 THE COURT: They will be admitted.

20 MR. TOUGER: Hold on one second?

21 THE COURT: Sure. While they're looking, as we  
22 discussed we are going to go to five today, but tomorrow we are  
23 going to sit from 9:30 to 5:30. OK?

24 MS. TEKEEI: If we could have just one moment,  
25 Mr. Schwartz had a question.

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1 THE COURT: Sure. I mean there is so little time  
2 left, if there is an issue about something, just don't read it  
3 now and we can talk about it after court.

4 MS. TEKEEI: Yes, we can deal with it today.

5 MR. SCHWARTZ: So no objection to everything except  
6 2095, which we will talk about.

7 THE COURT: So all the others listed will be admitted.  
8 Thank you.

9 (Government Exhibits 2223, 2300, 2112, 2227, 2039  
10 received in evidence)

11 (Government Exhibits 2041, 2042, 2043, 2045, 2047  
12 received in evidence)

13 (Government Exhibits 2049, 2050, 2052, 2231, 3215  
14 received in evidence)

15 (Government Exhibits 2053, 1272, 2232, 2233, 1226  
16 received in evidence)

17 (Government Exhibits 3216, 2234, 3217, 1236, 1273  
18 received in evidence)

19 (Government Exhibits 2241, 3276, 2256, 2263, 2267  
20 received in evidence)

21 (Government Exhibits 2070, 2072, 2276, 2118, 2075  
22 received in evidence)

23 (Government Exhibits 3245, 2077, 2079, 2086, 2084  
24 received in evidence)

25 (Government Exhibits 2092, 2093, 2094, 2098 received

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1 in evidence)

2 (Government Exhibits 2099, 2119, 3272 and 2298  
3 received in evidence)

4 MS. TEKEEI: Thank you. Special Agent Kroll, if you  
5 could turn to Government Exhibit 2223 to begin with.

6 Ms. Sheinwald, please publish that to the jury.

7 And, Agent Kroll, if you could go ahead and read this  
8 e-mail.

9 A. This is an e-mail from Monday, September 8, 2014 from Jason  
10 Galanis, subject Cliff, to Devon Archer.

11 "Arch, the Tribe and GT want to close on the 18th,  
12 which is next Thurs. We would need to wire to Cliff this week  
13 so he can wire to you on Monday I would think. The bonds can  
14 be acquired on Thursday. They are delivered same day ... DVP.  
15 Of the nine custodians that hold the prior tranche that were  
16 acquired, none had a single issue in taking delivery from U.S.  
17 Bank.

18 "Morgan Stanley will hold \$15 million of your  
19 municipal portfolio. You will diversify it over time.

20 "Not my place to have a work with Cliff.

21 "Jason."

22 Q. Thank you. If we could turn next to Government Exhibit  
23 2300.

24 And, Ms. Sheinwald, if you could publish the e-mail on  
25 the bottom first.

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1 E-mail from Clifford A. Wolff on September 24, 2014 to  
2 Sebastian Momtazi, jason@holmbycompanies.com, Devon Archer,  
3 subject Rosemont Seneca Harvest.

4 "Seb, I need the wire instructions for Rosemont Seneca  
5 Harvest, LLC. I'll be wiring funds into that account at MS.  
6 Thanks. Cliff."

7 A. On the same day, jason@holmbycompanies wrote, "My notes say  
8 it is Rosemont Seneca Bohai, LLC. We were both a little off on  
9 the name. Seb, please confirm. Cliff, we will need you to  
10 send a direction letter to send the \$15 million to the above  
11 entity, less some legal we discussed generally. J."

12 Q. E-mail from Sebastian Momtazi, September 24 to Jason  
13 Galanis, copying Cliff Wolff and Devon Archer: "Confirmed.  
14 Cliff, here are the instructions again:

15 "Account name: Morgan Stanley Smith Barney, LLC, FFC  
16 account name Rosemont Seneca Bohai LLC. Seb."

17 Now, if we could turn next to Government Exhibit 2115.

18 MR. SCHWARTZ: This is one of the ones.

19 MS. TEKEEI: I'm sorry. Please take that down.

20 2112.

21 Thank you.

22 Q. E-mail from Jason Galanis on September 25, 2014 to  
23 Sebastian Momtazi, cc Devon Archer, Cliff Wolff, subject  
24 indentures trustee. And attached wire instructions, Wakpamni  
25 Town Center.pdf.

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1 "Seb, not for transmittal yet, but the attached are  
2 the coordinates for the bond indenture trustee. When we have  
3 everything buttoned down, RSB LLC will want to originate the  
4 trade to purchase the bonds. Wanted you to have the attached  
5 when that moment occurs."

6 Ms.Sheinwald, if we could next have Government Exhibit  
7 2042.

8 And, Mr. Kroll -- Special Agent Kroll, if you could  
9 begin with the e-mail from Ms. Driever on Monday, September 29  
10 at 1:32 p.m.

11 A. Sure.

12 Q. I apologize. Let's go back for one moment.

13 Ms.Sheinwald, if you could pull up the third page of  
14 this e-mail, and I will begin with -- if you could pull that up  
15 next to page 2 of the e-mail which is the beginning of this  
16 e-mail chain. E-mail from Sebastian Momtazi on Monday,  
17 September 29 to Catharine Driever, cc Devon Archer, subject  
18 bond purchase.

19 "Good morning, Catharine. As discussed, we would like  
20 to make the following bond purchase. This is a new issue,  
21 which is DTC eligible. It can settle either DTC or physical  
22 delivery. From Rosemont Seneca Bohai LLC. A purchase in the  
23 amount of \$15 million of issuer: Wakpamni Lake Community Corp.  
24 S D SPL LTD REV, dated September 26, 2014. Issue description:  
25 Taxable-town center development.

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1 "Please let me know what else you need from our end,  
2 and we will be happy to provide."

3 Now, Ms.Sheinwald, if you could turn to the first page  
4 of this exhibit.

5 And, Special Agent Kroll, if you could begin with the  
6 e-mail from Ms. Driever at 1:32 p.m.

7 A. Sent on September 29 as well to Sebastian Momtazi and Devon  
8 Archer.

9 "Hi, Sebastian. I'm waiting for confirmation from the  
10 trader if we can hold the security on our platform. Thanks,  
11 Catharine."

12 Q. E-mail from Catharine Driever on Monday, September 29 to  
13 Sebastian Momtazi, cc Devon Archer.

14 "I spoke with Keith Henselen at U.S. Bank and the deal  
15 is not closed yet. He could not confirm whether the deal will  
16 be set up yet on DTC.

17 "As I mentioned earlier, you cannot buy these bonds  
18 through Morgan Stanley. If you purchase them from the  
19 placement agent and try to transfer them into MS via DTC, there  
20 is a chance we may not be a able to hold them (similar to what  
21 has happened with FLKM). We would then have to send them back  
22 to U.S. Bank.

23 "Moving forward, I'm not sure what your timeframe is  
24 to purchase the bonds through U.S. Bank/the placement agent,  
25 but we would need to get approval that we can hold them prior

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1 to attempting to transfer through DTC (if they can get set up  
2 on DTC). We would need to wait for the deal to close and then  
3 I can send over the paperwork for you to fill out to try and  
4 get an exception."

5 A. Then Sebastian Momtazi wrote: "J, see below."

6 Q. E-mail from Devon Archer on September 29 to Sebastian  
7 Momtazi and Jason Galanis:

8 "We can get the exception just not sure what the  
9 timing is on the close?" Devon Archer."

10 Now, Ms.Sheinwald, if you could please turn to  
11 Government Exhibit 2043, and we will start with the e-mail on  
12 September 29 at 4:34, e-mail from jason@holmbycompanies wrote:

13 "Dumbest e-mail I've ever seen in investment banking  
14 or wealth management. How can it be "closed" prior to paying  
15 for the bonds? It makes no sense on its face. I'm  
16 flabbergasted."

17 A. Then Devon Archer wrote to jason@holmbycompanies cc'ing  
18 Sebastian Momtazi:

19 "Do we know Keith? And does he know anything?"

20 Q. Ms.Sheinwald, if we could turn next to Government Exhibit  
21 2045, and beginning with the e-mail from Ms. Driever on  
22 September 30, 2014 to Sebastian Momtazi, cc'd Devon Archer and  
23 Eugene Schatz re bond purchase:

24 "Hi, Seb. This CUSIP is not set up on Bloomberg. It  
25 must be set up before we can proceed."

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1 A. Then Sebastian Momtazi wrote to Devon Archer:

2 "Should I give all the purchase information to  
3 Deutsche Bank and see if they can do it in theory? Seb  
4 Momtazi."

5 Q. E-mail from Devon Archer to Sebastian Momtazi:

6 "Yes. But it looks like we will get it done with MS  
7 first and we can move it if need be. No issue asking DB  
8 though. Don't say amount yet."

9 OK, Ms.Sheinwald, if we could turn next to Government  
10 Exhibit 2047. On September 30, 2014 Jason Galanis wrote:

11 "Arch, MSSM seems to be trying to subscribe to the new  
12 issue like a "trade." As a trade it involves coordination.

13 "My suggestion at this stage is to simply DVP the  
14 transaction by wiring the money to U.S. Bank and U.S. Bank  
15 delivers the securities to MSSB. Full stop.

16 "The securities are recorded at the bond registrar --  
17 which is U.S. Bank -- also serving as the indenture trustee for  
18 the seven year duration.

19 "I think we direct them to wire U.S. Bank tomorrow and  
20 take delivery of your bonds.

21 "We need a physical address for delivery. We also  
22 need an e-mail address for U.S. Bank to correspond with at  
23 MSSB. Jason."

24 A. On Wednesday, October 1, 2014 Devon Archer wrote to Jason  
25 Galanis and Sebastian Momtazi:

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"Agreed. Instruct. Devon Archer."

(Continued on next page)

I6B5gal8

1 BY MS. TEKEEI:

2 Q. Ms. Sheinwald, if you could turn next to Government Exhibit  
3 2049? If you could put up the first page of this exhibit on  
4 the left next to the second page on the right, and beginning  
5 with the bottom e-mail from Sebastian Momtazi on Wednesday,  
6 October 1st, to Catharine Driever, cc Devon Archer, regarding  
7 wire transfer request:

8 "Good morning, Catharine. Per the attached  
9 instructions, please wire \$15 million from Rosemont Seneca  
10 Bohai to U.S. Bank National Association, ref Wakpamni Town  
11 Center. Devon will be available for a voice confirmation at  
12 646-436-3745. Thanks and best, Seb."

13 A. On October 1st as well. Catharine Driever responded to  
14 Sebastian Momtazi, cc-ing Devon Archer, Eugene Schatz:

15 "Confirming receipt. We will call shortly with Gene  
16 to give a status on holding the Wakpamni bonds. Thanks,  
17 Catharine."

18 Q. E-mail from Sebastian Momtazi to Jason Galanis and Devon  
19 Archer. Forward wire transfer request:

20 "Surely we should instruct to accepted and work on  
21 next steps after?"

22 A. Then Jason@Holmsby companies wrote:

23 "See last e-mail. Thanks for staying on this."

24 Q. E-mail from Devon Archer to Sebastian Momtazi and  
25 Jason@Holmsbycompanies.com:

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1           "Seb, I initiated the wire and awaiting voice confirm.  
2       Devon Archer."

3           MS. TEKEEI: Your Honor, as it is 5:00 I think this  
4       would be a good place to stop.

5           THE COURT: Great. Thanks.

6           Ladies and gentlemen, we will see you tomorrow and we  
7       will go from 9:30 to 5:30. Remember to keep an open mind and  
8       don't research or discuss the case.

9           Thank you.

10          (Continued on next page)

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(Jury not present)

THE COURT: We can discuss things in the morning. I'm going to ask you to be here at 9:10 so we can discuss the issues that are outstanding but tell me the exhibit numbers that are in dispute. One was 2117?

MR. QUIGLEY: 2117, your Honor; 2115, 2122, and 2095.

MR. SCHWARTZ: So, 2095 was not on your list before so I haven't seen it so there may be no objection. But, I will look at it and let everyone know.

THE COURT: Okay.

MR. SCHWARTZ: 2117 was the subject of letter writing so your Honor has the arguments.

THE COURT: I will rule on that first thing in the morning.

MR. SCHWARTZ: 2115 is very straightforward. It is an automated alert that says that the \$15 million exceeded a \$125 threshold. The only purpose, as far as I can tell, is to show that, try and suggest there is something suspicious about the wire but it has no independent relevance, it is cumulative of the other evidence, and it should be excluded under 403.

2122 is a more substantial issue and that's this and I will say it briefly to sensitize your Honor to the issue. I can put it in a letter if you want.

After your Honor issued the Code Rebel ruling last week, the government marked a series of new exhibits for the

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1 first time, we started getting them on Friday and got one as  
2 recently as yesterday, about an entity called Archer  
3 Diversified TCG. Archer Diversified TCG has nothing to do with  
4 Mr. Archer. It is Jason Galanis' entity, it is an entity that  
5 he used to purchase a condominium in Tribeca. It appears that  
6 at least the \$1 million downpayment for the \$10 million home  
7 came from Wealth Assurance Private Client directly to the law  
8 firm that was handling the escrow. I don't object to that.

9 The government, however has marked this e-mail, which  
10 is an e-mail between, from Cliff Wolff, the lawyer, to  
11 Sebastian Momtazi, with Mr. Archer on copy saying basically we  
12 are going to create this entity called Archer Diversified to  
13 take advantage of Mr. Archer's cache.

14 That is literally his only connection to this  
15 transaction, that he was cc'd and did not respond to this  
16 e-mail. Jason Galanis signed every other piece of paper that I  
17 am aware of relating to that transaction. The money never went  
18 through Mr. Archer's hands, Rosemont's Seneca Bohai's hands,  
19 anything like that. So, I think it is incredibly misleading to  
20 suggest that that purchase, which was done with misappropriated  
21 bond proceeds, had anything to do with Mr. Archer.

22 That's my objection to that.

23 MR. QUIGLEY: To respond briefly?

24 On 2115, which is the first e-mail, this is one of the  
25 e-mails that your Honor had deemed not subject to the crime

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1 fraud exception relatively close to trial. We are not  
2 intending to argue that there is anything suspicious in and of  
3 itself about this wire transfer, but it is relevant to show  
4 that Mr. Archer's awareness that the wire, that money was  
5 coming from Jason Galanis, the money that was used to purchase  
6 the bond. Essentially, Jason Galanis is forwarding Mr. Archer,  
7 Mr. Wolff, and Mr. Momtazi an alert that \$15 million has been  
8 sent out of his account at Thorsdale. It is centrally relevant  
9 to the case especially in light of arguments that Mr. Archer  
10 didn't know where the money was coming from.

11 MR. SCHWARTZ: But it doesn't say anything about  
12 Thorsdale on the exhibit which is the point and we have heard  
13 five other e-mails that made the point that Mr. Galanis was  
14 originating and in charge of that wire.

15 MR. QUIGLEY: Your Honor, I don't think it is  
16 cumulative of anything. It shows Mr. Archer's involvement,  
17 being apprised of the movement of funds in the transaction. It  
18 is coming from Jason Galanis. I think it is relatively  
19 straightforward.

20 On the other, the issue with 2115. So, I'm not sure  
21 there is --

22 THE COURT: I thought you just talked about 2115.

23 MR. QUIGLEY: I'm sorry. 2122.

24 THE COURT: Right, Archer Diversified.

25 MR. QUIGLEY: So, there is evidence in the record now,

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1 specifically in Government Exhibit 512 and specifically in  
2 testimony of Mr. Dunkerley that one of the first wires out of  
3 the WAPC account went to an entity called Katsky Korins. The  
4 government seeks to establish through not any of the exhibits  
5 listed by Mr. Archer but other exhibits that Katsky Korins was  
6 the representative seller in Mr. Galanis' purchase of 260 West  
7 Broadway. So, that's directly relevant to show where the bond  
8 proceeds went. The issue is that Mr. Galanis purchased that  
9 entity in the name of Archer Diversified -- sorry purchased the  
10 condominium in a name using the name Archer Diversified. And  
11 the reason that 2122 is relevant is to show Mr. Archer's  
12 awareness that his name was being used. There has been a  
13 continual defense theme and I expect it will continue that  
14 Mr. Galanis, we heard some of it today, suggesting in the  
15 cross-examination of Raycen Raines, for example that,  
16 suggesting that Jason Galanis and others used the name Devon  
17 Archer and Hunter Biden to kind of entice people to do  
18 business.

19 The issue here is that Mr. Archer was aware, he was on  
20 notice that Archer Diversified was being used to purchase this  
21 condominium. We are not suggesting that he was involved other  
22 than that was involved in purchasing the condominium, but it is  
23 relevant to preclude and rebut any argument that Archer  
24 Diversified was, and his name was being unwittingly used in  
25 this transaction, and the fact that the transaction involved

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1 the use of bond proceeds is obviously highly relevant to show  
2 that the funds were misappropriated.

3 THE COURT: Why don't you do this. Can you e-mail to  
4 my chambers' e-mail the exhibits that I don't have that aren't  
5 part of the binders?

6 MR. QUIGLEY: Yes, your Honor.

7 THE COURT: Any of the new exhibits that haven't been  
8 previously marked, if you can send them to chambers and I can  
9 look at them tonight?

10 MS. MERMELSTEIN: We will of course send them to  
11 chambers. I believe that your exhibit binder should have been  
12 updated but we can easily e-mail them.

13 THE COURT: If I have them then it is no issue.

14 MS. MERMELSTEIN: We will send them anyway.

15 THE COURT: So, I will see you all at 9:10 tomorrow.

16 MS. MERMELSTEIN: Your Honor, I'm so sorry. I know  
17 you are trying to get off the bench. A few matters I want to  
18 put on the record, on everyone's radar.

19 THE COURT: Yes.

20 MS. MERMELSTEIN: Two things.

21 Given where we are now, I expect that tomorrow we will  
22 call -- we are going to have to keep reading some of these  
23 e-mails and we will call Walsh, Turney and Martin. And maybe  
24 defense lawyers have a different view of cross-examination but  
25 I think given the likely long cross-examination of Martin, I

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1 think that likely, including a few more e-mail reading modules,  
2 takes us through the end of Wednesday. If we need to we will  
3 also called the Bit Board witness. There are two witnesses  
4 left then, I expect, barring the need to authenticate documents  
5 or something else changing who I expect we will call Monday,  
6 Mark McMillan and Special Agent Dayna Kendall. They are both  
7 unavailable until Monday. Mr. McMillan is on vacation and I'm  
8 happy to proffer ex parte why Agent Kendall is not available.  
9 I don't think it is going to be an issue at all.

10 I wanted to let your Honor know that's where we are.

11 THE COURT: All right.

12 MS. MERMELSTEIN: So, that's one thing, on scheduling.  
13 I think with respect to the Cooney recording --

14 THE COURT: I am going to rule first thing in the  
15 morning. I just have a meeting right now --

16 MS. MERMELSTEIN: Okay.

17 THE COURT: -- that I am late for.

18 MS. MERMELSTEIN: Okay. Okay.

19 MS. NOTARI: Your Honor, I would need to know what  
20 they're trying to put in.

21 THE COURT: Okay. I can get a ruling out tonight. I  
22 just have to go to this meeting now. So, I understand you want  
23 to know about the Cooney recording.

24 MS. MERMELSTEIN: Yes.

25 THE COURT: I will do a short ruling on that tonight

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1 and I will meet you tomorrow at 9:10 and I will rule on all of  
2 the other issues. I have already told you the gold bars are  
3 coming out. I think on Martin everything else we have  
4 discussed.

5 MS. MERMELSTEIN: I have one incredibly small thing to  
6 raise but it can be handled in the morning.

7 THE COURT: Tell me what it is, generally, if I need  
8 to read anything tonight.

9 MS. MERMELSTEIN: A different witness testified about  
10 their understanding of Mr. Galanis' SEC bar. Mr. Schwartz said  
11 he didn't think it was going to come in in that way. I think  
12 it is fine that it did. Mr. Martin is similarly going to say  
13 that he had an understanding that Galanis was barred by the SEC  
14 in connection with Penthouse and some kind of misstatement with  
15 respect to the accounting.

16 I think these witnesses are allowed to say what they  
17 understood about Jason Galanis' bad history but given  
18 Mr. Schwartz' feeling about the last time it happened, I didn't  
19 want there to be a surprise.

20 We can talk about it in the morning.

21 MR. SCHWARTZ: I don't understand why that needs to be  
22 elicited again. It was hearsay the first time, it is hearsay  
23 the second time. They have a reason to put the fact into  
24 evidence which is a non-hearsay reason which is why I thought  
25 we were going to do it by stipulation. But, now that it is in,

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1 I can't see any reason why we should be going back there.

2 THE COURT: We will talk about that tomorrow. 9:10.

3 Thank you.

4 (Adjourned to June 12, 2018 at 9:10 a.m.)

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GOVERNMENT EXHIBITS

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10	2092, 2093, 2094, 2098 . . . . .	.1962
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#### DEFENDANT EXHIBITS

13	Exhibit No.	Received
14	3755 . . . . .	.1762
15	3162B . . . . .	.1768